



SASA
SOUTH AFRICAN SOCIETY OF ANAESTHESIOLOGISTS

Peer Review Policy and Procedures

Version 1/2020

Peer Review Policy and Procedures

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1. Definitions

- “Administrative record” means all documents and information before the South African Society of Anaesthesiologists at the time of Societal Mediation or Peer Review Mediation undertaken in terms of this Peer Review Policy and Procedures document.
- “Business Unit” means the “business units” of SASA which are functional units that enable the society to function optimally. These include the Regulation, Education, Private Practice, Public Sector and Special Interest Group Business Units.
- “Business Unit Convener” means the elected SASA councillor that convenes one of the SASA business units.
- “Council” means the elected Council of the South African Society of Anaesthesiologists unless otherwise specified.
- “CEO” means the appointed Chief Executive Officer of the South African Society of Anaesthesiologists unless otherwise specified.
- “Complaint” means a statement of unsatisfactory or unacceptable conduct made in writing to the South African Society of Anaesthesiologists relating to a member of the society or the profession.
- “Complainant” means a natural person or juristic entity who submits a complaint to the CEO of SASA.
- “Mediation” in terms of this policy document means Societal Mediation or Peer Review Mediation conducted in a structured, voluntary, without prejudice and confidential basis after an agreement to mediate has been signed.
- “Mediation Record” means the record of mediation including pre-mediation documentation, the mediation agreement, confidentiality agreement, any report and settlement agreement, all of which remain strictly confidential to the mediator and the parties involved in mediation.
- “Member” means an anaesthesiologist or anaesthetist who is a member of the South African Society of Anaesthesiologists unless otherwise specified.
- “Non-member anaesthesiologist” means a specialist in anaesthesiology who is not a member of the South African Society of Anaesthesiologists unless otherwise specified.
- “Non-member anaesthetist” means a medical practitioner (non-specialist) who is not a member of the South African Society of Anaesthesiologists unless otherwise specified.
- “Participants” means all persons involved in the Societal Mediation and/or Peer Review Mediation processes save for the CEO of SASA.
- “Parties” mean the complainant and member or practitioner as envisaged in 4.3 below
- “Peer Review Expert” means a suitably qualified and experienced anaesthetist or person knowledgeable in a particular area being considered during mediation.
- “PPBU” means the Private Practice Business Unit of SASA unless otherwise specified.
- “PSBU” means the Public Sector Business Unit of SASA unless otherwise specified.
- “RBU” means the Regulation Business Unit of SASA unless otherwise specified.
- “SASA” means the South African Society of Anaesthesiologists unless otherwise specified.
- “Society” means the South African Society of Anaesthesiologists unless otherwise specified.

2. Objectives of the SASA Peer Review Policy

- 2.1 To advocate for a practice of anaesthesia that enhances patient safety according to guidelines of best practice, evidence-based medicine and in line with appropriate scopes of practice, thereby maintaining and improving quality and standards of anaesthesia care.
- 2.2 To hold our members to an expectation of good practice - clinically, ethically and professionally.
- 2.3 To require adherence of its members to all statutory rules and laws that may be applicable to the practice of anaesthesia within the borders of the Republic of South Africa.
- 2.4 To provide a fair, robust, and non-adversarial mechanism to enable formal peer review and dispute resolution without prejudice for the members of the Society in an effort to advance the objectives of this policy.
- 2.5 To ensure members subjected to peer review have access to transparent and comprehensive policies, procedures, expectation, and recourse in the event they are involved in a peer review process.
- 2.6 Specifically, as a society of peers, to inform best practice in accordance with these objectives and not to encourage, enable or permit abuse of this process to enable prosecutorial or litigatory practices.

3. Tenets of the SASA Peer Review Policy

- 3.1 The process of SASA Peer Review will be conducted within a confidential, without prejudice mediation framework, enabling a transparent, collaborative review with a complainant, a SASA member or non-member (who is a voluntary participant) and the Society.
- 3.2 The formal Peer Review process will only take place within the framework of facilitative mediation under a concluded mediation and confidentiality agreement between the subject of the peer review and the complainant.
- 3.3 Cooperation of the member who is the subject of a Peer Review process as well as the complainant will be voluntary.
- 3.4 The Peer Review process will ensure fairness towards all parties involved in the Peer review process.
- 3.5 Transparency to all participants in all matters related to a specific Peer Review process will be enabled, while maintaining confidentiality as it relates to the patient and the member.
- 3.6 The policy conforms to the principles of administrative justice.
- 3.7 Consistency will be applied in the application of principles and findings, so that practice can be enhanced for all members.
- 3.8 Formal oversight of the Peer Review process (not individual case details) by the elected officials of the Society will be performed in every instance.
- 3.9 Exact and comprehensive recordkeeping of the SASA administrative record of the Peer Review process will be enabled.
- 3.10 All expert opinion provided for peer review processes will be regarded as professional opinions derived by peers and will be contained and protected within the confidentiality of the mediation process.

3.11 All findings will be kept confidential and information will only be shared as agreed to and documented in the Mediation Settlement Agreement if and when concluded.

3.12 The SASA Peer Review process will concern itself only with the intention of mediating resolution to conflict while advocating for best practice in accordance with societal and international guidelines, and best practice standards.

3.13 Settlement Agreements concluded as part of the Peer Review Process (see section on Guidance for Settlement Agreement) may not allow for any sharing of an outcome with parties outside the process, may provide for partial sharing, or may provide for further sharing of information. The SASA CEO will be responsible for distributing any information deemed sharable as part of the Settlement Agreement. In all instances, the tenets of this policy will remain as adhered to on publication of any part of the process to any party.

4. Scope of the SASA Peer Review Policy

The Policy will apply to:

- 4.1 Complaints or requests for peer review that are submitted to the Society either directly by a complainant or by a Business Unit Convener of the Society.
- 4.2 All members of the Society in good standing;
- 4.3 Any anaesthesia practitioner that has voluntarily subjected themselves to the SASA Peer Review process either through an established contract with the Society or through direct request by the practitioner.

The Policy will not apply to:

- 4.4 Save for as provided in 4.3, non-member anaesthesiologists or non-member anaesthetists;
- 4.5 Save for as provided in 4.3, peer review where the issue to be peer reviewed happened while a current member was not a member at that time;
- 4.6 Any tariff queries, as the Society is not legally permitted to provide any review or give any comment relating to specified monetary values (tariffs) for a service provided;
- 4.7 Any person referred to in 4.2 that does not voluntarily wish to participate in a Peer Review process;
- 4.8 Any person referred to in 4.2 where the complainant does not wish to voluntarily participate in the Peer Review process under a mediation framework;
- 4.9 Matters that, in the opinion of the Peer Review Mediator Chairperson, will not meet the objectives of this policy.

Any member or Business Unit Convener (on behalf of the Business Unit) may request a formal Peer Review of:

- 4.10 A member's clinical practice;
- 4.11 A member's coding practice;
- 4.12 A member's billing practice;

- 4.13 Any member whose conduct is suspected or alleged to be contrary to the accepted rules of membership or societal guidelines or compromise patient care or wellbeing.

5. Societal structure governing the SASA Peer Review Policy

- 5.1 As the SASA Peer Review Policy exists in a facilitative mediation framework, the parties participant to the mediation are the Complainant through which Peer Review Mediation is initiated, the SASA member or a practitioner as detailed in 4.2. and 4.3, and SASA appointed facilitative mediators depending on the matter being mediated.
- 5.2 The SASA CEO will act as gatekeeper to entry into a SASA Peer Review Mediation Process by ensuring any complaint referred to this process meets the objectives, tenets and scope of this Policy prior to referral for activation of the process.
- 5.3 The SASA Immediate Past President (or designate by the Immediate Past President or the CEO if either is of the opinion the Immediate Past President or CEO is conflicted or unavailable) is the Peer Review Mediator Chairperson. He/ She is expected to be a formally accredited mediator and is responsible to chair as ~~as~~ facilitative mediator or may designate this authority to any formally accredited and impartial mediator within SASA or, if necessary, an external formally accredited mediator. The functions of the Peer Review Mediator Chairperson include:
- 5.3.1 Pre-mediation counsel to all parties participant to the Peer Review Mediation Process. (This may be delegated to any member of SASA who is a formally accredited mediator).
- 5.3.2 Facilitative mediation or appointment of a facilitative mediator to enable peer review mediation to be conducted;
- 5.3.3 Appointment of a Peer Review Observer.
- 5.3.4 When required or appropriate, nomination of no more than 3 Peer Review experts from within SASA membership who are to be included in the mediation process to review the facts of the case and provide opinion as may be required.
- 5.3.5 Ensuring, that the appropriate Mediation and confidentiality agreements are signed by complainant, member/ practitioner, all experts and any SASA representatives participant to the Peer Review Mediation.
- 5.3.6 Final presentation of the administrative record he/ she was participant to, (that is a component of the final administrative record of SASA in facilitating the mediation) to the SASA CEO and SASA President or Designate (typically expected to be a member of SASA EXCO or a Business Unit Convener)
- 5.3.7 Overall Coordination of the Peer Review process in conjunction with the CEO;
- 5.3.8 Attempt to resolve a complaint directly between the parties, via the process of Societal Mediation (facilitative) where deemed appropriate.
- 5.3.9 Act as proxy for the CEO in all matters related to Peer Review Mediation in the CEO's absence.
- 5.4 The functions and responsibilities of the CEO include:

- 5.4.1 Ensuring that the Peer Review Policy and Procedures and Peer Review Processes are lawful, and that necessary support is provided to all Peer Review participants that allows for and promotes ethical conduct in accordance with the principles set out in the Peer Review Policy;
 - 5.4.2 Receiving and administering all requests for mediation;
 - 5.4.3 Ensuring the SASA administrative record of every Mediation is finalised and captured as well as documenting final communications to participants of the Mediation process.
 - 5.4.4 Receiving and administering all requests for reimbursement of costs incurred from SASA appointed participants to the mediation;
 - 5.4.5 Administering any funds that may be payable by third parties and non-members requesting peer review processes to cover costs incurred;
 - 5.4.6 General assistance, support, and policy guidance for participants in the mediation process;
 - 5.4.7 Act as proxy for the Immediate Past President in all matters related to mediation in the Immediate Past President's absence.
 - 5.4.8 Ensuring Peer Review Experts who provide opinion on request are indemnified by the parties and covered by the Societal Professional Indemnity insurance as well as informed as to the level of cover they can expect.
- 5.5 A Peer Review Observer may be appointed at the discretion of the Peer Review Mediator in every instance of Peer Review Mediation.
- 5.5.1 The observer is appointed by the Peer Review Mediator Chairperson and is expected to observe proceedings with the intention to ensure information is available to parties relating to legislation, regulation and guidelines.
 - 5.5.2 The observer is required to be well au fait with the SASA Practice Guidelines, the SASA Private Practice Guidelines (if applicable) and the HPCSA ethical rules. It is preferable (but not required) for an observer to be an accredited mediator.
 - 5.5.3 The observer's function is to monitor and advise whether any concessions, offers or settlement agreement proposed specifically infringe on SASA Guidelines, HPCSA ethical rules, relevant legislation or may result in compromise to best practice or patient care, in their capacity as an assistant to the mediator.
 - 5.5.4 Upon request from the mediator or any party to the mediation, the observer may recommend inclusion in a Mediation Settlement Agreement of any particular notable item (anonymised) that may impact SASA guidelines, serve as educational for membership or is in the public interest. Inclusion is only possible by agreement of the parties.
- 5.6 Peer Review Experts will be selected where the parties agree that it is required and appropriate for the specific peer review mediation. The Peer Review experts:
- 5.6.1 Are appointed on behalf of both parties by the Peer Review Mediator and only with prior written agreement by the parties.
 - 5.6.2 Remain anonymous to the Peer Review Mediation process and participants to the process.

- 5.6.3 Are provided with all relevant information redacted and anonymised but contextualised to allow analysis of the relevant facts to provide opinion as detailed by agreement with the parties to the Peer Review Mediation process.
 - 5.6.4 Are responsible for finalising, documenting, and presenting of expert opinion to the Peer Review Mediator Chairperson.
 - 5.6.5 Are responsible to complete mediation and confidentiality agreements as participants to the Peer Review Mediation process prior to participation in the process.
 - 5.6.6 Where Peer Review Experts (from amongst the Society's members or from outside of its membership at the discretion of the Peer Review Mediator Chairperson and by agreement of the parties participant to the mediation) will have a cost implication, the Peer Review Mediator Chairperson must obtain permission from the CEO (or SASA Executive Committee member in the CEO's absence) before such an Expert can be retained.
 - 5.6.7 Anonymous abridged curricula vitarum will be provided to the participants for selection.
 - 5.6.8 Experts are appointed with the purpose of providing the participants and mediator impartial, independent, confidential and objective insight into medical care and conduct that may or may not be relevant to the specific circumstances related to the mediation.
 - 5.6.9 Experts are provided with all relevant information redacted and anonymised but contextualised to allow analysis of the relevant facts to provide opinion as detailed by agreement with the participants to the Peer Review Process.
- 5.7 The Peer Review Mediator Chairperson will take the following factors into consideration when nominating the Peer Review Experts and Observer:
- 5.7.1 The specific matter for which the Peer Review Mediation is to be convened, ensuring Peer Review Expert nominees with specific interest, applicable experience, expertise and/or skills to deal with the matter;
 - 5.7.2 The expected duration of the matter;
 - 5.7.3 Whether specific practice circumstances (e.g. being in the public sector or the private sector) are important considerations;
 - 5.7.4 Whether the matter is of a local, regional and/or national nature;
 - 5.7.5 Whether there may be any bias or conflict of interest involved;
 - 5.7.6 Whether the member is eligible for selection-(See section entitled "General Provisions in terms of the Peer review process".)
- 5.8 The Executive Committee of the Council of the South African Society of Anaesthesiologists will serve the following function with respect to Peer Review Mediation:
- 5.8.1 Provision of oversight on all aspects pertaining to the Peer Review Policy and Processes.

5.8.2 Receive final presentation of confirmation of Settlement Agreement reached, if applicable, and completed administrative process relating to Peer Review Mediation from the Peer Review Mediation Chairperson;

5.9 The functions of the Council will be:

5.9.1 Oversight on all aspects pertaining to the Peer Review Policy;

5.9.2 To receive any complaints relating to the process of mediation and will then be responsible to investigate such complaints.

6. Initiation of the Peer Review Process: Acceptance of complaint and notification to respondent

6.1 Subject to the CEO confirming that the complaint is within the SASA mandate and complete, he/she shall send a copy of the complaint and all relevant information to the respondent and the Peer Review Mediator Chairperson.

6.2 Any aggrieved person may, after exhausting all the internal remedies provided for in this Peer Review Policy, approach the appropriate body or regulatory authority or a court of law for resolution of a matter, which it deems not to have been resolved satisfactorily. This does not deprive any person of the right to obtain any interim relief in an appropriate court of law whilst pursuing the internal remedies.

6.3 Should any party to the Peer Review Process initiate litigation or formal complaint to a regulatory authority in the matter, the Peer Review Process and mediation therein will immediately be halted to allow the litigation to proceed.

7. Repeat complaints received by the CEO

7.1 The CEO shall not accept a complaint in relation to the same activity or the same material of the same respondent that was previously complained about, irrespective of the outcome of the previous complaint. This does not exclude new complaints on a different activity or different material of the same respondent. This prohibition does not preclude a complaint being referred to further regulatory or legal processes.

8. Operational procedure: Societal Mediation

8.1 As the first course of action, the CEO and Peer Review Mediator Chairperson must attempt to resolve a complaint directly between the parties, via the process of Societal Mediation.

8.1.1 In deliberations on any matter related to Societal Mediation, the Peer Review Mediator Chairperson may consult any member of the Peer Review Panel, SASA Council, or any of the convenors of the SASA Business Units. All information shared with the mentioned parties must be anonymised.

8.1.2 The Peer Review Mediator Chairperson will suggest measures that may reasonably lead to resolution of the matter to the satisfaction of all parties concerned.

8.1.2.1 If the matter is resolved to the satisfaction of all parties concerned, the complaint will be considered as closed. The CEO must keep an administrative record of the Societal Mediation.

- 8.1.2.2 If the matter is resolved between the parties, all information shall be kept confidential by the CEO and shall only be published in anonymised fashion if part of a settlement agreement and if considered to be in the interest of the public and or the membership.
- 8.1.2.3 If the matter is not resolved to the satisfaction of all parties, a formal Peer Review Mediation process must be instituted as below.
- 8.1.3 If the alleged complaint is, in the opinion of the Peer Review Mediator Chairperson or the CEO, of such importance that it raises issues of patient safety, the complainant shall not be obliged to follow the Societal Mediation process but rather proceed directly to a request for formal Peer Review Mediation.
- 8.2 Should Societal Mediation fail or be inappropriate, the complaint must be comprehensively conveyed in writing (if not already completed) by the Complainant to the CEO describing the nature of the complaint.
- 8.3 Upon initiation of Societal Mediation, the SASA pre-mediation guideline, societal model pre-mediation questionnaire, societal mediation agreement to mediate and/or post mediation settlement agreement substantially complying with the format set out in templates 1 – 5 and attached to this policy and procedures document, must be presented to the parties for acceptance and signature.
 - 8.3.1 Where applicable, the complainant will consent to the processing of his/her health information and/ or complaint related information for the purposes of mediating his/her complaint/dispute.
 - 8.3.2 Pre-mediation counsel will be provided to the parties to ensure the mediation process of SASA is adhered to. Societal mediation will include:
 - 8.3.2.1 Explanation of the mediation process and its principles including but not limited to voluntary participation, confidentiality, impartiality, non-binding nature during mediation and without prejudice principles.
 - 8.3.2.2 The objectives and tenets of this policy;
 - 8.3.2.3 Indication of reasonable resolution time considered to be 21 (twenty-one) ordinary days;
 - 8.3.2.4 Confirmation of alternative remedies should Societal Mediation fail.
 - 8.3.3 The parties to the agreement (for example, the member and the complainant) will agree that the patient subject's data will be processed to third parties for purposes of the mediation and that any information generated during the mediation process will be regarded as confidential to the extent that the participating parties will, individually, have a sole discretion whether or not to disclose his/her confidential information to the mediator and/or the other parties to the mediation proceedings.
 - 8.3.3.1 Patient data to be shared in this process is only enabled by:
 - 8.3.3.1.1 Direct patient consent for sharing within this process OR
 - 8.3.3.1.2 Consent obtained from the patient by any party to the process OR
 - 8.3.3.1.3 Anonymised sharing of patient information.

9. Operational procedure: Formal Peer Review Process

9.1 In the event of Societal Mediation failure or where Societal Mediation is considered inappropriate, the Peer Review Mediator Chairperson will institute formal Peer Review Mediation with formal agreement of participating parties.

9.1.1 The Peer Review Mediator Chairperson, in collaboration with the CEO, shall:

9.1.1.1 Complete the SASA Peer Review Document Section 1 which details the complaint, any common information or any "agreed to" information.

9.1.1.2 Appoint a Peer Review Mediator (in the event there is any reason the Peer Review Mediator Chairperson is unable to fulfil this function).

9.1.1.3 Appoint a Peer Review Mediation Observer if required.

9.1.1.4 Conduct or delegate Pre-mediation council with the parties, and then conclude SASA Peer Review Mediation and Confidentiality agreements with all participating parties.

Where applicable, the complainant will consent to the processing of his/her health information and/ or complaint related information for the purposes of mediating his/her complaint/dispute. The parties to the agreement (member and the complainant) will agree that the patient subject's data will be processed to third parties for purposes of the mediation and that any information generated during the mediation process will be regarded as confidential to the extent that the participating parties will, individually, have a sole discretion whether or not to disclose his/her confidential information to the mediator and/or the other parties to the mediation proceedings.

9.1.1.5 Through the office of the CEO, propose and finalise time and date for mediation

9.1.2 Inform parties to the Peer Review Mediation that:

9.1.2.1 They will have the opportunity to engage with the Peer Review Mediation process. Should either party not wish to engage with the Peer Review Mediation process his/her/it's refusal must be expressed and be recorded in the administrative record. In this event the other party will be informed of this as well as remedies available to them where Peer Review Mediation is not possible.

9.1.3 That the Peer Review Process will be terminated in the event the process no longer falls within the Scope of this Policy (e.g. point 4 – member no longer in good standing) and that this will have to be communicated to the parties, as well as the remedies available to the parties in law and regulation;

9.1.4 Make a copy of the Peer Review Policy and Procedures available to the participants.

9.1.5 It is generally expected that Peer Review Mediation is carried out within 21 (twenty-one) ordinary days post receipt of signed Mediation Agreements from all parties.

9.2 The Peer Review Mediator Chairperson will appoint a mediator (if required) and an observer (if required) within 7 (seven) days of signature of Mediation Agreements.

9.3 At the conclusion of Peer Review Mediation, the CEO is informed of the following by the Peer Review Mediator Chairperson:

- 9.3.1 Formal indication by the mediator and participants that the Mediation has been concluded;
- 9.3.2 Formal indication by the participants that a Settlement Agreement has been reached; OR
- 9.3.3 Formal indication by the participants that no settlement has been reached in which case the Mediator records same and indicates the available remedies to the parties.
- 9.3.4 Note of any part of the Settlement Agreement that is to be shared to SASA for publication or noted for SASA guideline amendment recommendation.

10. General Provisions in terms of the Peer Review Process

10.1 Any member serving on any Peer Review structure must;

- 10.1.1 Be a member of SASA in good standing or specifically appointed by the Chairperson;
- 10.1.2 Familiarise him/herself with the SASA Peer Review Policy and Procedures;
- 10.1.3 Serve as required, subject to his/her professional schedule, on a Peer Review structure, bearing in mind the requirements of a specific Peer Review appointment to meet at a certain frequency and/or to meet in person and/or via electronic means;
- 10.1.4 Be available and to dedicate his/her time to consider the matter(s) before him/her, to apply his/her mind, to contribute to discussions and considerations regarding the Peer Review structure;
- 10.1.5 Recuse themselves from the Peer Review Process and immediately inform the Chairperson should they feel they may have a conflict of interests, or believe they may have a bias, or if they believe they cannot be impartial at any time in the process;
- 10.1.6 Treat all information related to the Peer Review process with the strictest confidence;
- 10.1.7 Only be selected to serve as a Peer Review Expert once within a 12-month period, unless there is a second matter of such similar circumstances to warrant the involvement of a member with prior experience, even within the 12-month period.

10.2 No Peer review process may take longer than 3 months to complete. If a Peer Review process, by the nature of the query and not administratively, is not able to be completed within the 3 months, the Peer Review Mediator Chairperson must make an official appeal to the SASA Executive Committee, with proper justification, for an extension.

10.3 Any member who is found to be in breach of any of the provisions contained in the Peer Review Policy and Procedures will be liable to disciplinary action as decided upon by Council.

11. Guidance on Settlement Agreements in Peer Review Mediation matters.

11.1 Settlement Agreements are concluded between the parties.

11.2 Remedies, concessions and agreement cannot be concluded if contrary to SASA Guidelines, regulatory rules, legislation or deemed not to be in patients' best interests.

11.2.1 Should patients' best interests be a concern, the Peer Review Mediator Chairperson shall approach and refer the concern to a Peer Review Expert who has not been appointed in the mediation in terms of 5.6.1. for his/her advice; OR

11.2.2 The parties may be encouraged to reconsider and amend the terms of the Settlement Agreement to align with relevant guidelines, rules or legislation. In the event parties do not agree to an amendment that is aligned to guidelines, regulation or legislation, the Peer Review Mediator will either continue with the Mediation Process or no Settlement Agreement will be reached.

12. Communication and Confidentiality

12.1 All Mediation conducted in terms of the policy and procedures of the Society are subject to strict confidentiality.

12.2 All participants and the CEO, unless the parties expressly determine otherwise in a settlement agreement, are bound by the confidentiality of the Mediation.

12.3 Specifically, no information used or shared in the Mediation may be used as the basis of expert opinion or be used or incorporated into a complaint to a regulator (unless expressly agreed in a Settlement Agreement). Furthermore, no information used or shared in the mediation may be referred to or utilised as part of legal action in any way whatsoever.

12.4 If the final Settlement Agreement includes a request for any action by SASA, such action will only take place post acceptance and ratification of the action by SASA Council.

12.5 If part of the final Settlement Agreement and only on instruction by Council, the CEO will report on any component of the Settlement Agreement detailed therein to the general membership in a general and anonymized fashion.

13. Record Keeping Requirements

13.1 Any documents relevant to but not used in the Mediation are to be preserved securely by the CEO or his/her nominees within the SASA Secretariat for a period of 5 (five) years.

13.2 All record of proceedings, discussion notes, reports, drafts and written deliberations used in Mediation are confidential and will be destroyed at the end of the Mediation.

13.3 Settlement Agreements are to be finalised and retained by the parties and only preserved in accordance with 13.1 if indicated as a requirement in the Settlement Agreement.

14. Financial provisions in terms of the Peer Review Policy and Procedures

14.1 The CEO will take overall responsibility for all financial matters related to Peer Review processes.

14.2 All payments for Peer Review requests may only be paid into the Society's general bank account.

14.3 All payments, accompanied by bank reference numbers, must be duly noted in the record of all Peer Review processes.

- 14.4 Direct Costs of Peer review will consist of travel costs and S&T costs or any other direct costs that are itemised and accounted for.
- 14.5 Direct costs of the Peer Review Mediation will be shared 50/50 between the complainant and non-member anaesthetist/anaesthesiologist as agreed to by those parties.
- 14.5.1 In the event a SASA member is one of the parties and the complaint relates to an event/s while SASA membership was active, the member's cost will be covered by the Society as a benefit of membership,
- 14.6 The Society will require payment equal to the total estimated cost to the Society of conducting the specific Peer Review process.
- 14.6.1 The payment required as a formal cost estimate must be paid into the Society's nominated account before the Peer Review Mediation can be convened.
- 14.7 The Society may, in its sole discretion, cover the full cost of Peer Review Mediation as decided on a case by case basis and ratified by SASA Council at the next council meeting.
- 14.8 A member may not accept any payment or other remuneration for services performed related to the Peer Review process, except those duly authorised by the Society.
- 14.9 Serving members shall not be entitled to any remuneration except in circumstances that will qualify for disbursement and reimbursement of travel and accommodation cost, in line with SASA's policies in relation to travel, accommodation and disbursements.
- 14.10 Serving members may apply for Extra-Ordinary Remuneration, where it can be shown conclusively that the duties required while serving on a Peer Review structure lead to a loss of income, that would have been earned were it not necessary to perform his/her duties. Income may also be defined as use of official leave time to perform Peer Review duties. The following procedure must be followed;
- 14.10.1 The relevant information demonstrating the loss of income must be submitted to the CEO in written format;
- 14.10.2 The CEO and the Peer Review Mediator Chairperson (or SASA Executive Committee Member) will consider the evidence and inform the member of their decision within 7 working days after submission.
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15. Templates/ Codes

15.1 SOCIETAL PRE-MEDIATION GUIDELINE (TEMPLATE 1)

PREAMBLE

The intention of this pre-mediation protocol is to:

- Ensure that both parties are enabled to:
 - Take an informed decision on whether or not to try mediation
 - Know what to expect at the mediation; and
 - Jointly agree on who to appoint as their mediator.
- Ensure that the pre-mediator and mediator are aware of the societal pre-mediation expectations and guidelines by the Society and in accordance with the Societal Peer Review Policy and Procedures.

PRE-MEDIATION NOTES

- The pre-mediation meeting is chaired by a pre-mediator and typically lasts for one hour.
- The Society will arrange that the Pre-mediation mediator will deliver the service of Pre-Mediation free of charge.
- Although personal interaction is preferable it may at times be necessary for the pre-mediator to facilitate the pre-mediation process via email or teleconference.
- It bears emphasis that this guideline may be adapted to the circumstances of every matter.

MEDIATOR GUIDELINES FOR PRE-MEDIATION MEETINGS

1. Welcoming and introductions.
2. What to expect at mediation – explain structure, general features and advantages of mediation.
3. How to prepare for mediation – focus on interests, concerns and needs and keep an open mind.
4. Establish if the parties will be represented by their lawyers at mediation and if so, explaining what the role of lawyers are during mediation.
5. Explain what happens if the mediation is successful – settlement agreement that may be made an order of court if summons or application proceedings had been instituted. If not, the agreement will be binding like any other agreement.
6. Explain what happens if the mediation is not successful – parties' right to litigate is protected – they have nothing to lose by participating.
7. Explain what happens during litigation.
8. Establish if the dispute (s) warrants mediation.
9. Establish if the parties attending the pre-mediation wish to proceed with mediation.
10. Establish if the parties attending on behalf of legal entities, will obtain the necessary settlement authority.
11. Establish if other stakeholders in the conflict such as indemnifiers or insurers should also attend mediation.
12. Establish if the parties attending wish to appoint the pre-mediator as the mediator or any other suitably qualified SASA mediator.
13. Establish agreement on date, time and venue for the mediation and completion of a written agreement to mediate, agreeing on the:
 - a. Mediator
 - b. Costs of the mediation (if applicable)
 - c. Who pays what
 - d. Date, time and venue
14. Adjournment for mediation on the date, time and place as agreed in the agreement to mediate.
If one or both parties believe their dispute does not warrant a postponement for mediation and may be resolved during the pre-mediation, the pre-mediator may assist them after they have completed an agreement to mediate.

15.2 SOCIETAL MODEL PRE-MEDIATION QUESTIONNAIRE (TEMPLATE 2)

Model confidential pre-mediation questionnaire

Mediation is **confidential** and any information provided in this questionnaire may not be shared with the other participant, unless the mediator has the express permission from the participant who completed this questionnaire.

The completion of this questionnaire or **guide** is entirely **voluntary** but it may give the mediator a better understanding of the concerns, interests and expectations of the participants.

1. What would it mean to you if you were able to settle your dispute in a manner acceptable to you?

2. List your concerns, interests and/or expectations that need to be addressed by any settlement reached at the mediation:

(Examples: reputation, recognition, compensation...)

3. Do you have any suggestions on how the other participant(s) may address your concerns, interests and/or expectations in a settlement?

4. List the concerns, interests and/or expectations, if any, which the other participant(s) may wish you to address in a settlement?

5. How, if at all, do you propose to address the concerns, interests and/or expectations of the other participant(s)?

6. Was their mutual trust between you and the other participant(s) before you started to disagree? Y/N

7. If there was mutual trust before, do you wish to restore the trust or is it more important to have a clean break with the other participant(s)?

8. What would an ideal solution of the disagreement(s) you have with the other participant(s) look like?

9. Have you applied your mind to the following potential consequences if the disagreement(s) between you and the other participant(s) is/are not settled:

9.1 How much litigation will cost? Y/N

9.2 How long it may take for litigation to be completed? Y/N

9.3 The likelihood that even if you win the case, you may not be able to recover your costs from the other participant(s)? Y/N

9.4 The personal and productive time taken up by preparation, consultation and attendances during litigation? Y/N

9.5 The effect litigation may have on your relationship with the other participant(s)? Y/N

9.6 The effect of litigation on your or your organization's reputation? Y/N

9.7 The anxiety and stress caused by uncertainty over the judge or magistrate's final decision? Y/N

15.3 SASA ADOPTED CODE OF PROFESSIONAL CONDUCT FOR MEDIATORS

In order to ensure alliance with international standards, the Council has decided to adopt the code of professional conduct as prescribed by the International Mediation Institute.

The document here provided is based on the IMI Code of Professional Conduct, subject to necessary amendments to the definitions, and to section 1, to make it applicable to South African circumstances.

1. Definitions

For the purposes of this Code:

- 1.1 Mediation is a form of dispute resolution in which an independent mediator aims to assist two (or more) disputants in reaching an agreement. Whether an agreement results or not, and the content of that agreement (if any), is determined by the parties themselves, rather than it being imposed by the mediator.
- 1.2 An *Accredited Mediator* (also called a *Mediator* in this Code) is one whose competency in the practice of mediation has been accredited by the Council, and whose name is entered into the Register as an accredited mediator.
- 1.3 An *Accredited Service Provider ('ASP')* is a mediation service provider which/who has been accredited by the Council as such.
- 1.4 The *Council* is the Dispute Settlement Accreditation Council ('DiSAC').

2. Mediator appointment

2.1 Entitlement to use the title '*Accredited Mediator*' and the Council logo

In the event that an Accredited Mediator fails to maintain the Council's requirements for accreditation, or no longer qualifies as an Accredited Mediator, use of the title *Accredited Mediator* and use of the Council's name and logo will terminate, and the mediator's profile will no longer be included on the Council Register.

2.2 Promotion of mediators' services

Subject to applicable laws and to regulations governing professional practice, mediators will present and promote their practice in a truthful way. They may quote freely from, and link to, the Council web portal.

2.3 Appointment

Before the mediation begins, mediators will advise the parties (in the mediation agreement or otherwise in writing):

- About their relevant qualifications.
- Under the auspices of which Accredited Service Provider (ASP) the service is being conducted, and whose code of professional conduct the mediator will observe.
- Which process will apply in the event of a party believing the mediator has not met the standards of the stated code of professional conduct.
- That at the end of the mediation they will be invited to offer written feedback on the process and on the mediator's role, and
- Whether they hold a current professional indemnity liability insurance policy covering their practice as a mediator.

3. Diligence, independence, neutrality, impartiality

3.1 Diligence

Mediators may accept an assignment to act as mediator in any situation where they feel competent to serve in that capacity.

3.2 Independence and Impartiality

3.2.1 Mediators will not accept an appointment without first disclosing anything within their knowledge that may, or may be seen to, materially affect their independence or impartiality. This duty to disclose is a continuing obligation throughout the mediation process.

3.2.2 The existence of circumstances potentially affecting, or appearing to affect, a Mediator's independence or impartiality will not automatically imply unfitness to act as a Mediator provided these circumstances have been fully disclosed and addressed to the satisfaction of the parties and the Mediator.

3.2.3 Mediators will always act in an independent and impartial way. They shall act in an unbiased manner, treating all parties with fairness, quality and respect. If at any time a Mediator feels unable to conduct the process in an independent and impartial manner, (s)he will express that concern and will offer to withdraw from the mediation. Such circumstances include:

3.2.3.1 financial or personal interests in the outcome of the mediation;

3.2.3.2 existing past or future financial, business or professional relationship with any of the parties or their representatives about which the Mediator is aware;

3.2.3.3 other potential sources of bias or prejudice concerning a person or institution which may affect that Mediator's independence or impartiality or reasonably create an appearance of partiality or bias.

3.3 Conflicts of Interest

3.3.1 Mediators will conduct reasonable inquiries to determine if any conflicts of interests may exist. They will have a continuing duty to disclose any conflicts of interests that may become apparent during the mediation process.

3.3.2 Following any such disclosures, a Mediator will decline to participate as a Mediator in a particular case if any of the parties raises an objection, unless a contract or applicable law or court order nevertheless requires the Mediator's participation. Even then, if a Mediator personally believes that the matters disclosed would inhibit their actual impartiality, the Mediator should withdraw as the Mediator.

3.3.3 After accepting appointment, and until the mediation process ends, mediators will not enter into financial, business, professional, family or social relationships or acquire financial or personal interests that are likely to create, or might reasonably create the appearance of, conflict of interest, partiality or bias, without making a prior disclosure to all the parties and gaining their consent.

3.3.4 For a period of 12 months following the end of a mediation, Mediators will not represent in an advisory capacity any party to a mediation in the same or a substantially related matter, unless all parties to the mediation expressly consent to that representation after full disclosure. Acting as a neutral in other dispute resolution proceedings (for example as a mediator or arbitrator) that may involve some or all of the parties will not be considered a *representation in an advisory capacity* for the purposes of this clause.

4. Mediation Process

4.1 Procedure

Mediators will satisfy themselves that the parties to the mediation and their advisers understand the characteristics of the mediation process, their roles as parties and advisers, and the role of a mediator. The mediator will ensure that before the mediation begins, the parties have understood and agreed the terms and conditions which will govern the mediation including, those relating to obligations of confidentiality on the mediator and on the parties. It is best practice for those terms to be contained in a written mediation agreement unless the parties or the circumstances dictate otherwise.

4.2 Fairness and Integrity of the process

4.2.1 Mediators will ensure that, if there are to be any pre-mediation private communications with the mediator, all parties are aware they will have equal opportunity to raise issues.

4.2.2 Mediators will explain the mediation process to the parties and their advisers, and be satisfied that that they consent to the process being used and to the mediator selected (unless applicable law, court rules, contract or court directive require use of a particular process and/or mediator).

4.2.3 Mediators will conduct the process with fairness to all parties and will take particular care to ensure that all parties have adequate opportunities to be heard, to be involved in the process and to have the opportunity to seek and obtain legal or other counsel before finalizing any resolution.

4.2.4 Mediators will take reasonable steps to prevent any misconduct that might invalidate an agreement reached at mediation or create or aggravate a hostile environment. Mediators will also be satisfied that the parties have reached agreement of their own volition and knowingly consent to any resolution.

4.3 Termination of the process

4.3.1 The Mediator will ensure the parties understand that they may withdraw from the mediation at any time by informing the mediator and all other parties without being required to give any justification for doing so.

4.3.2 Mediators shall withdraw from a mediation if a negotiation among the parties assumes a character that to the Mediator appears unconscionable or illegal.

4.4 Feedback

Parties engaged in a mediation must be informed that they are welcome to provide feedback or complaints regarding the mediator's conduct to the Accredited Service Provider under whose auspices the mediation took place, in order to assist in the continued evaluation of professional conduct.

4.5 Fees

Parties to a mediation must, prior to the start of the mediation, be aware of how the fees and expenses for the mediation will be calculated, and how they will be paid by the parties (and if shared between the parties, in what proportions.)

5. Confidentiality

5.1 Mediators will keep confidential all information acquired in the course of serving as a mediator in a mediation, including the fact of mediation being held, unless:

- compelled to make a disclosure by law, or by a court of law
- required under paragraph 5.1, in which event the recipients of the confidential information shall themselves be bound to maintain the confidentiality, or
- the specific information comes into the public domain (otherwise than as a result of a disclosure by the mediator), or
- the parties release the mediator from the confidentiality restriction, or
- necessary to defend the mediator from any proceedings or charges for which (s)he risks incurring any liability.

5.2 The mediator may, however, disclose having previously served as a mediator in a mediation involving one or more of the parties, provided none of the details of that case are disclosed.

5.3 Mediators will discuss confidentiality with the parties before or at the beginning of the mediation and obtain their consent to any communication or practice by the mediator that involves the disclosure of confidential information.

5.4 Mediators may use or disclose confidential information obtained during a mediation when, and to the extent that, they believe it to be necessary to prevent death or serious physical harm or physical damage from arising or believe an illegal act may realistically arise. Before using or disclosing such information, if not otherwise required to be disclosed by law, mediators must, if they consider it appropriate, make a good faith effort to persuade the party and/or the party's counsel or other advisers, to act in such a way that would remedy the situation.

5.5 At no time will mediators adduce evidence or testify on behalf of one of the parties in making or defending a claim against another party to the same mediation where they have acquired confidential information from the other party, unless all that information is no longer confidential or unless the party protected by the confidentiality gives consent, or is so ordered by a court.

6. Professional conduct issues and complaints

6.1 An accredited mediator may consult his/her Accredited Service Provider about any professional or ethical dilemmas.

6.2 Where an accredited mediator is subject to this Code, a party to a mediation who believes there has been a lack of compliance with the Code may activate the *complaints and disciplinary process* of the Accredited Service Provider under whose auspices the mediation took place.

15.4 SOCIETAL MEDIATION AGREEMENT: AGREEMENT TO MEDIATE (TEMPLATE 3)

In the Mediation of

and

The above participants have agreed to enter into mediation, and they together with the mediator appointed in terms of this Agreement, agree as follows:

1. Nature of mediation

- 1.1. Mediation is a **confidential** process in which the mediator assists the participants to reach an agreement through joint problem solving. This means that nothing that is said or done at the mediation can be communicated to anyone outside the mediation. No recording is allowed, and all notes made during the mediation will be destroyed at the end of the mediation.
 - 1.1.1. Where applicable, the relevant party will need to consent to the processing of his/her health information and/ or complaint related information for the purposes of mediating his/her complaint/dispute.
 - 1.1.2. All parties to the agreement will agree that the patient subject's data may be processed to experts for purposes of the mediation and that any information generated during the mediation process will be regarded as confidential.
 - 1.1.3. The participating parties will, individually, have a sole discretion whether or not to disclose his/her confidential information to the mediator and/or the other parties to the mediation proceedings with express permission being sought prior to disclosure.
- 1.2. Mediation is **voluntary**, and any participant may at any stage decide not to continue with the mediation. Neither party will however abandon the mediation without first affording the mediator a reasonable opportunity to establish the reasons for their desire to terminate the mediation and to attempt to address these in a private session with the party in question.
- 1.3. To encourage discussion, the mediator will not disclose to the other participant any information that has been conveyed to him in private by a participant, unless the participant gives him express permission to disclose such information.
- 1.4. Mediation is **non-binding** until everything is agreed, reduced to writing and signed by all participants. Once signed such an agreement is binding on the parties.

- 1.5. Mediation takes place **without prejudice** and the participants will retain all of their rights and legal remedies if the mediation is not successful, including the right to proceed with litigation or arbitration.
- 1.6. The mediator may assist the participants to generate settlement options but does not impose his/ her views or solutions on them. The mediator's function is to create a safe space for dialogue between the parties so that they can themselves seek a mutually acceptable solution to the dispute
- 1.7. The mediator has an ethical obligation to be **independent** and **impartial** and to work equally hard on behalf of both participants during the mediation and undertakes to do so. The parties confirm that they have had no prior dealings with the mediator and that they do not know him/ her personally.
- 1.8. The participants agree not to interrupt each other during the mediation and to respect the process and the mediator.

2. Settlement Authority

The parties confirm that they have **settlement authority** within the reasonably anticipated range of a settlement or have a person with such settlement authority on standby, telephonically during the mediation.

3. Summary of facts

Each of the parties may furnish the mediator with a brief summary of the facts and with such other documents as they deem appropriate no less than 24 hours before the mediation takes place.

4. Litigation

- 4.1. The participants agree to refrain from pre-emptive manoeuvres and adversarial legal proceedings (except in the case of an emergency necessitating such action), while actively engaged in the mediation process.
- 4.2. The participants agree that, in the absence of an express agreement concluded during the course of the mediation, nothing that happens during the mediation will have any effect on the running of prescription in the event of the mediation not producing an outcome that is acceptable to the parties.

5. Appointments

During the mediation the following appointments may be necessary and in alignment with the SASA Peer Review Policy:

- 5.1. A Peer Review Observer may be appointed by the Mediator.
 - 5.1.1. The peer review observer is expected to observe proceedings with the intention to ensure information is available to the mediator and parties relating to legislation, regulation and societal guidelines.
 - 5.1.2. The function of the observer, in his/her capacity as an assistant to the mediator, is to monitor and advise whether any concessions, offers or settlement agreement proposed specifically infringe on SASA Guidelines, HPCSA ethical rules, relevant legislation or may result in compromise to best practice or patient care .

- 5.1.3. Upon request from the mediator or any party to the mediation, the observer may recommend inclusion in a Mediation Settlement Agreement of any particular notable item (anonymised) that may impact SASA guidelines, serve as educational for membership or is in the public interest. Inclusion is only possible by agreement of the parties.
- 5.1.4. The Peer Review Observer is required to adhere to all the confidentiality, independence and impartiality requirements of the Mediation process as well as sign an agreement to this effect prior to participating in the mediation.
- 5.2. Peer Review Experts may be necessary to be appointed by the Peer Review Mediator.
 - 5.2.1. Experts are appointed on behalf of both parties by the Peer Review Mediator and only with prior written agreement by the parties participant to the mediation.
 - 5.2.2. Anonymous abridged curricula vitarum will be provided to the participants for selection.
 - 5.2.3. No more than three experts may be appointed by the Peer Review Mediator and only if required in the mediator's and participants' joint opinion.
 - 5.2.4. Experts are appointed with the purpose of providing the participants and mediator impartial, independent, confidential and objective insight into medical care and conduct that may not be relevant to the specific circumstances related to the mediation.
 - 5.2.5. Experts remain anonymous to the Peer Review Process and participants to the process.
 - 5.2.6. Experts are provided with all relevant information redacted and anonymised but contextualised to allow analysis of the relevant facts to provide opinion as detailed by agreement with the participants to the Peer Review Process.
 - 5.2.7. Experts are responsible to complete mediation and confidentiality agreements as participants to the Peer Review Mediation Process prior to participation in the process.
 - 5.2.8. Where Peer Review Experts (from amongst the Society's members or from outside of its membership at the discretion of the Peer Review Mediator Chairperson and by agreement of the parties participant to the mediation) will have a cost implication, the mediator must obtain permission from the CEO (or SASA Executive Committee member in the CEO's absence) before such an Expert can be retained.

6. Indemnity

The participants agree that the mediator will not be liable for any act or omission directly or indirectly connected to the mediation. He/ she can also not be called upon to testify or to participate in any way in further legal or other process that may ensue should the mediation not produce an outcome that is acceptable to the parties.

The participants further agree to hold the South African Society of Anaesthesiologists, its officers, the mediator, the SASA observer and any appointed experts during the mediation harmless and to forgo any and all claims against the parties for consequential damages from them unless it can be shown that s/he acted in bad faith or was grossly negligent in executing his/ her duties.

7. Date, Time & Venue

The mediation will take place at..... On20.....
between and and if needs be - thereafter as agreed upon between the parties.

8. Appointment of the mediator

The participants hereby appoint as their mediator at the rate of R..... per day (plus VAT) which will specifically be to cover the direct expense cost of the mediator, observer and experts (if necessary) to provide services .

The payment related to costs will be apportioned as follows:

The South African Society of Anaesthesiologists%

.....%

.....%

The fees are to be paid via EFT not less than 48 hours prior to the mediation into the following account.

The South African Society of Anaesthesiologists (SASA)

.....

Account no

Branch no

Signed at _____ **on this** _____ **day of** _____ **20** _____

Name:

.....

Capacity: Mediator

Name: _____

.....

Capacity: Participant

Name: _____

.....

Capacity: Participant

15.5 SOCIETAL PEER REVIEW EXPERT MEDIATION AGREEMENT (TEMPLATE 4)

- Confidential
- Independent and impartial
- Legal indemnity
- Reimbursement for costs

TERMS AND CONDITIONS OF ENGAGEMENT AS PEER REVIEW EXPERT

In the matter - mediation reference number: _____

1. PREAMBLE:

- 1.1** **Whereas** the parties in the abovementioned mediation have agreed to mediate their dispute in accordance with the current SASA Peer Review Policy and Procedure;
- 1.2** **And Whereas** the parties have agreed that it is required and appropriate to engage the services of a Peer Review Expert;
- 1.3** **And Whereas** the parties have agreed that the appointed Peer Review Mediator engage the services of the Peer Review Expert;
- 1.4** **And Whereas** the engagement of the Peer Review Expert is conditional upon his/her acceptance of the terms and conditions set out in this agreement, as follows:

2. OBJECTIVE AND NATURE OF SERVICES:

- 2.1. The Peer Review Expert is appointed to assist the parties in their mediation on matters falling within the Expert's field of expertise.
- 2.2. The Peer Review Expert is required to express an honest, impartial, unbiased and reasonably held opinion either independently or as part of a Peer Review Expert panel engaged by the Peer Review Mediator.
- 2.3. The Peer Review Expert is instructed always keeping the objectives and tenets of the current SASA Peer Review Policy and Procedure in mind.
- 2.4. The Peer Review Expert understands and acknowledges that as a participant to mediation, s/he is obliged to respect, uphold and maintain the principles and confidentiality of the mediation process.
- 2.5. The Peer Review Expert understands and acknowledges that by accepting this engagement, s/he would be disqualified from accepting instructions to opine on this matter in private or before any other regulatory forum or court, as the case may be.
- 2.6. The Peer Review Expert's engagement in this matter is restricted entirely to the parties' mediation undertaken in terms of the current SASA Peer Review Policy and Procedure.

3. COMMENCEMENT AND TERMINATION OF ENGAGEMENT:

- 3.1. The appointment of the Peer Review Expert shall commence on the date of his/her selection in terms of clause 5.6 to the current SASA Peer Review Policy and Procedure.
- 3.2. The termination of the Peer Review Expert's engagement shall occur upon termination or conclusion of the mediation, or on instruction of one or both of the parties through the appointed Peer Review Mediator, as the case may be.

4. CONFIDENTIALITY AND PROTECTION OF PERSONAL INFORMATION:

- 4.1. The Peer Review Expert shall only use redacted records and information provided by the parties through the Peer Review Mediator for the purposes of providing his/her concise written opinion for use at the mediation.
- 4.2. The Peer Review Expert shall keep all records and information received during the course of the execution of his/her peer review expert duties, strictly confidential and not allow anyone else to access such information or to disclose such information to third parties, without both parties prior written consent having been obtained with the assistance of the Peer Review Mediator.
- 4.3. In the event that the Peer Review Expert should inadvertently become aware of the identity of one or both of the parties, s/he shall immediately notify the Peer Review Mediator. The continued involvement of the Peer Review Expert will then be determined by the parties with the assistance of the Peer Review Mediator.
- 4.4. The Peer Review Expert shall take reasonable security measures such as the use of password protection for all electronic devices, secure password protected processing and disposal of documents and secure storage of documents, to protect the parties' records and information from destruction or accidental disclosure.
- 4.5. The Peer Review Expert agrees to notify the parties and the Peer Review Mediator immediately if there is an incident which may have compromised the security of the information and records received during the execution of his or her peer review expert duties.
- 4.6. Upon termination of the Peer Review Expert's engagement, s/he shall securely and permanently delete or destroy all information and records received during the execution of his/her expert peer review duties.
- 4.7. The Peer Review Expert agrees that his/her opinion shall be disclosed to the parties with the assistance of the Peer Review Mediator.
- 4.8. The Peer Review Expert agrees that his/her identity shall not be disclosed to the parties at any time.
- 4.9. The Peer Review Expert agrees that the Peer Review Mediator shall be aware of his/her identity.
- 4.10. The Peer Review Expert shall, to the extent necessary and for the duration of his/her engagement, comply with all applicable Personal Information Protection Regulations and Laws applicable within the Republic of South Africa.

5. CONFLICT OF INTEREST:

- 5.1. The Peer Review Expert shall not accept an appointment in a mediation matter where s/he has discussed, considered or reported for any of the parties prior to the engagement.
- 5.2. The Peer Review Expert shall not engage in a matter wherein s/he has treated the patient or been consulted in regard to the treatment and management of the patient involved in the mediation.
- 5.3. The Peer Review Expert shall not accept engagement in a matter wherein s/he is related to any of the parties, is friends with any of the parties or is a colleague working in the same practice/department of the Anaesthesiologist or Anaesthetist involved in the mediation.

6. EXPERTISE AND QUALIFICATION:

- 6.1. The Peer Review Expert warrants that the nature of the case falls within his / her area of expertise.
- 6.2. The Peer Review Expert warrants that his or her experience, expertise and/or skills as set out in his/her Curriculum Vitae furnished to SASA and the parties is factually accurate, up to date and correct.
- 6.3. The Peer Review Expert warrants that s/he has not been appointed to serve as a Peer Review Expert more than once in a twelve-month period preceding this engagement, save as to the extent provided for in paragraph 10.1.7 to the current SASA Peer Review Policy and Procedure.

7. REMUNERATION:

- 7.1. The Peer Review Expert shall accept the remuneration determined by SASA and ratified by SASA and/or the parties for all work done and expert services rendered strictly in accordance with the current SASA Peer Review Policy.
- 7.2. The Peer Review Expert shall not, under any circumstances, be permitted to accept any additional remuneration or incentive or benefit of any kind whatsoever from one or both of the parties in order to provide his/her expert services.

8. NON-COMPLIANCE WITH TERMS OF ENGAGEMENT:

- 8.1. Should the Peer Review Expert fail to comply with any of the terms and conditions of this appointment, s/he will immediately be disqualified from further engagement as Peer Review Expert and s/he shall forfeit any and all entitlement to remuneration for work done prior to his/her disqualification.

I, the undersigned, _____, declare that I have read these terms and conditions and hereby agree to my engagement as Peer Review Expert for mediation purposes.

Date:

Place:

15.6 MODEL SOCIETAL POST MEDIATION – SETTLEMENT AGREEMENT (TEMPLATE 5)

SETTLEMENT AGREEMENT BETWEEN

PARTY A _____

AND

PARTY B _____

GENERAL TERMS OF SETTLEMENT

The parties agree as follows:

- 1.1. If any of the terms of this Agreement is in conflict or inconsistent with any law, the invalidity of the term(s) will not affect the validity of the remainder of the terms of the Agreement.
- 1.2. Any number of days prescribed in this Agreement will be reckoned exclusively of the first and inclusively of the last day.
- 1.3. The Agreement and its annexures form the entire agreement between the parties and replace any previous agreements between them.
- 1.4. The Agreement may be signed in one or more **counterparts**, and each counterpart will be considered an original Agreement. All the counterparts will be considered one document and become a binding Agreement when one or more counterparts have been signed by each of the parties and delivered to the other.
- 1.5. A **waiver** of a breach of any term in this Agreement will not be considered:
 - 1.5.1. a waiver of a further breach of the same term, or
 - 1.5.2. a waiver of a breach of any other term, or
 - 1.5.3. a waiver of a party's right to declare an immediate or subsequent default.
- 1.6. The parties can **amend** this Agreement only by a **written** document signed by both parties.
- 1.7. The parties **warrant** that they have the **necessary authority** to sign this Agreement.
- 1.8. This Agreement is a **full and final settlement** of any and all causes of action the parties have against each other. If this Agreement results in the withdrawal, stay or the postponement *sine die* of any action or motion that has been instituted in a court of law or arbitration, the particulars and reference to the court, case number or arbitration reference are declared by either/ both parties and listed herein.

1.9. If action or motion proceedings have been instituted prior to this Agreement, the parties agree that any one of the parties may, at any stage, have the terms of this Agreement made an **order of court** or **arbitral award**, under the relevant case number or arbitration reference.

If this Agreement is made an order of court or arbitral award, clauses 1.10 and 1.11 do not apply and a party may take whatever legal steps are required to enforce compliance with the order of court or arbitral award.

1.10. If either party commits a **remediable breach** of this Agreement, then the aggrieved party must notify the party in breach to remedy the breach within ten days from the date of the delivery of the breach notice. If the party in breach fails to remedy the breach within ten days, the aggrieved party may:

- 1.10.1. cancel, or
- 1.10.2. enforce, and/ or
- 1.10.3. claim damages for breach of contract, or
- 1.10.4. notify the mediator who facilitated this Agreement that a dispute has arisen. If the mediator fails to resolve the dispute within five days of receipt of the dispute notice, or any longer period mutually agreed in writing by the parties, the aggrieved party may invoke clauses 1.10.1 through 1.10.3.

Any **irremediable breach**, including the breach of the confidentiality clause entitles the aggrieved party to immediately cancel the contract and claim damages.

If this Agreement is validly cancelled the aggrieved party may reinstate the original cause of action(s) in which event any stay of legal proceedings is lifted, as if this Agreement had not been reached.

1.11. **All notices** in terms of this Agreement must be in writing and considered given when delivered

- 1.11.1. **personally** to the recipient, or
- 1.11.2. by **email** on the day that the recipient party, directly or indirectly confirmed by return email, the receipt of the notice, or
- 1.11.3. by **registered** mail on the 7th day after posting to the following service addresses:

If to Party A: _____

If to Party B: _____

1.12. The parties may **alter their service addresses** by giving notice to the other party of a new address for the service of notices. The alteration will be effective after the expiry of ten days from the day on which the notice had been given.

1.13. If a dispute arises out of this Agreement the party who prevails in a court or arbitration will be entitled to **attorney and client costs**.

1.14. The parties must keep this Agreement **confidential**, and must not disclose either the existence or the terms of this Agreement to third parties, unless such disclosure is aligned to point 1.14.1 through 1.14.1.3 below or is necessary to enforce their rights in terms of this Agreement in a court of law or arbitration.

1.14.1. The parties specifically agree to inform SASA that the mediation process is complete and that a settlement Agreement has been finalized.

1.14.2. The parties expressly permit the SASA CEO to specifically communicate that the mediation process is finalized and that a Settlement Agreement has been finalized to the SASA Regulation Business Unit and SASA Council.

SIGNED AT _____ ON THE _____ OF _____ 20_____

Party A:

Capacities:

Party B:

Capacities