



# NMEDA MEDIATION POLICY & PROCESS

The National Mobility Equipment Dealer's Association (NMEDA) and its members shall maintain the highest professional sales and technical standards in the conduct of its business.

The goal and objective of NMEDA is to broaden the opportunities for people with disabilities to drive or be transported in vehicles modified with mobility equipment. All members work together to improve transportation options for people with disabilities.

Mediation is a process that establishes performance obligations that may be higher than those mandated by law. In any instance where the Mediation Process and the law conflict, the obligations of the law take precedence (however, this does not prohibit the NMEDA from calling for a higher standard of professional performance). The Mediation Committee is the oversight body that governs the mediation process under the direction and approval of the Board of Directors.

Mediation is performed in response to claims and/or complaints from three different types of conflict.

1. Consumer to Dealer
2. Consumer to Manufacturer
3. Member to Member

In all Mediation claims the complainant or respondent must be a NMEDA member for the Committee to take any action. If legal council is obtained by either the complainant or the respondent, the Mediation Committee will cease all action on a claim.

The Mediation Committee will review ALL complaints received by NMEDA members of a type that include, but not restricted to faulty workmanship based on the NMEDA Guidelines and QAP Rules, unfulfilled promise or contract, questionable business practices and claims of unethical behavior as described in the NMEDA Code of Ethics. The complaints will be arbitrated without prejudice from any member of the committee. If the complaint is lodged against a committee member's company, or should a committee member be involved directly or indirectly regarding a complaint, (i.e., a close competitor, or has performed any work on said complaint, etc.), they shall excuse themselves during the arbitration of said complaint and be temporarily absent from Committee while the case is in arbitration. **ALL correspondence of the Mediation Committee will be on plain paper or NMEDA letterhead (i.e., no company letterhead).** The Mediation Committee will be under the direction of a Board member. The Board member will submit any complaints and course of action from the Mediation Committee to the Board of Directors on a timely basis.

## A. DUTIES TO NMEDA:

- Members agree to abide by the Guidelines, QAP Rules, the Code of Ethics, and the NMEDA Bylaws, and abide by the decision of the Mediation Committee upon becoming a member of the organization.



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- It is expected that members will study and understand the above documents to ensure faithful implementation. Ignorance is no excuse.
- It is expected that members will make every effort to correct a situation or conflict with a consumer or another member before it reaches the stage of Mediation
- If charged with a mediation complaint or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, NMEDA members shall place all pertinent facts before the proper NMEDA Mediation Committee and shall take no action to disrupt or obstruct such processes.

### **. B. DUTIES TO THE CUSTOMER:**

- Protect the safety, health and welfare of the public by recommending and/or purchasing appropriate services, parts and products from reliable sources. NMEDA members will not knowingly provide inadequate safety procedures, untrained technical support, or initiate false or misleading sales promotion and advertising.
- To investigate every complaint, regardless how superfluous it may seem in the beginning and try to remedy the situation.
- Provide adequate facilities, use of tools, trained technical personnel and procedures as described in the Guidelines and QAP Rules
- NMEDA members shall protect the confidentiality of all privileged information relating to the provider/client relationships.
- NMEDA members shall, in accordance with the Code of Ethics, make efforts that, whenever possible, place agreements related to transactions in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties.

### **C. DUTIES TO OTHER NMEDA MEMBERS:**

- Members shall not falsely submit mediation claims in an overt attempt to restrain trade or interfere with the business of a competitor.
- To abide by the NMEDA Code of Ethics in all dealings with consumers and other members including, and especially, in matters that concern direct competitors.

### **MEDIATION DISCIPLINARY PROCEDURE:**

#### **D. NMEDA MEDIATION COMMITTEE**

1. The NMEDA Mediation Committee ("Committee") shall consist of the member Chairperson, and Board Representative, and 5 - 10 additional Committee members.
  - 1.1 A quorum of the Committee, in order for it to take any action, shall be the 66% present, either in person or through electronic means, whereby each person may hear one another and communicate.



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1.2 Notwithstanding the forgoing, Committee members shall be vigilant in their individual assessment regarding any possible conflicts of interest that would prohibit them from fully and fairly participating in the process.

1.3 If more than one (1) member of the Committee seeks recusal due to a conflict, and as a result a valid quorum is lost, the Committee chairperson and the Board Rep will the NMEDA Board Representative will be notified and it shall take steps to appropriately populate the Committee for the case in question.

2. Any and all actions of the Committee shall require, for passage, a majority of those voting being in favor of the action.

### **E. COMPLAINT PROCESS**

1. Any communication or complaint shall be transmitted, in writing, identifying the party submitting it (the complainant) to the NMEDA headquarters attention: Membership Coordinator. Complaint forms are available online at [www.nmeda.com](http://www.nmeda.com).
2. The NMEDA Mediation Form must be completed in full with as much detail as possible. Additional information may be included as an addendum.
3. Within three (3) business days, the NMEDA staff Membership Coordinator shall review the submission for completeness based on the foregoing factors and, if administratively complete, will forward the file to the Committee. If the submission is found to be deficient, the Membership Coordinator will contact the complainant to obtain the additional information.

2.1 If the additional information is not obtained within ten (10) business days of making inquiry to the submitting party, regardless of the status of the matter, the Membership Coordinator will send a report to the Committee noting the matter being submitted, and the deficiencies. The Committee can then decide to suspend the matter absent obtaining the requested information, or establish a secondary time line for the Membership Coordinator to continue trying to obtain the information and subsequently report back to the Committee.

### **F. PRELIMINARY NOTICES TO COMPLAINTS**

1. Upon receipt of an administratively adequate complaint, the Committee shall take the following actions following the first documented Committee meeting:
  - 1.1 A letter shall be mailed to the complainant by mail or email within seven (7) business days indicating:

1.1.1 Receipt of the complaint letter or email.



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- 1.1.2 The subject matter of the complaint.
  - 1.1.3 That the complaint was reviewed for a determination regarding whether it is eligible for consideration and investigation and the outcome.
  - 1.1.4 If additional information is required, a response from the Committee will be issued within approximately 60 days to indicate whether or not the Committee has deemed the complaint eligible for consideration and investigation.
  - 1.1.5 That, to the greatest extent possible, the investigation will be confidential (e.g., if other witnesses are ultimately interviewed).
- 1.2 If the complainant fails to provide any information establishing proof of the complaint, such information shall be requested by the Committee for receipt within ten (10) business days.

If it is determined to be necessary a final correspondence regarding the status of a submitted complaint will be reviewed by the CEO, in consultation with legal counsel.

### **G. CONSIDERATION OF COMPLAINT SUBMISSIONS**

1. The Committee shall make a determination in approximately thirty (30) business days, after all subsequent requested information, if any, is received, regarding whether the complaint shall be investigated.
2. If it is determined that a complaint is not eligible for investigation, the Committee shall: Communicate through a letter by mail or email to the complainant to indicate why the complaint cannot be accepted.
3. If, after receiving all information available from the complainant, it is determined that a complaint is eligible for investigation by the committee, they shall:
  - 3.1 Forward a letter by mail or email or telephone that the investigation shall commence and the complainant will receive written notification regarding the outcome of the investigation upon conclusion.
  - 3.2 Notify the respondent in writing by certified mail or telephone call that complaint against the respondent has been received and shall be investigated. In its letter the Committee shall:
    - 3.2.1 Provide the respondent with a copy of the actual complaint submitted, (If possible, honoring the anonymity of the complainant if



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requested.)

3.2.2 If appropriate, request a written reply from the respondent to the Committee regarding the allegations made by the complainant within ten (10) business days.

### H. INVESTIGATIONS AND HEARINGS

1. Investigation regarding a complaint shall not commence until the Committee has obtained the original complaint and any accompanying evidence, evidence that a copy of the complaint has been successfully delivered to the respondent (e.g., receipt of certified mail, successful delivery of email notification), and any other information deemed necessary by the Committee.
2. The Committee shall meet to discuss the complainant's allegations and physical evidence, and the reply from the respondent. In the course of its investigation, the Committee may recommend, and obtain NMEDA Board of Director's approval for, suspension of the activities/participation of the involved individual(s) until such time as it obtains additional information requested from the complainant, the respondent, or other sources.
3. The Committee works with all parties involved to determine an equitable settlement. If a settlement can be reached that is acceptable to both parties, then the complaint resolution will be entered into the Committee meeting minutes and the case will be closed by majority vote of the Committee.
4. If, in the opinion of the Committee, a case cannot be resolved it will constitute an "unresolved dispute." At this point, the Mediation Committee will notify all parties of the next steps in the process in writing by mail or email. These include mandating sanctions against the NMEDA member(s), if necessary.
  - 4.1 If the respondent does not appeal or request a hearing before the Committee, and provide adequate cause for such hearing, within five (5) business days of the receipt of such, the Committee's ruling shall be implemented.
  - 4.2 In the event of an unresolved dispute, a permanent file of events will be kept at NMEDA headquarters, and the Mediation Committee must put in writing why the case was considered unresolved, and what actions the member must take in order for it to be resolved.
5. If the Committee, based upon its investigation, determines that further proceedings are warranted in regard to the complaint, the Committee shall notify the complainant and the respondent that a hearing will be held at a specified time and place within fifteen (15) business days of receipt of the notice.



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6. At the hearing, neither party is required to attend (thus, the ultimate ruling resting on the information previously acquired), and they need not appear in person (they can attend electronically where they can be heard and they can communicate and answer questions from the Committee). Both the complainant and the respondent shall have the right to offer evidence (documents and live testimony) and to cross-examine any witnesses. Members of the Committee shall also have the right to question witnesses. A written record of the proceeding shall be maintained to the best of the Committee's ability.

6.1 No legal counsel will be allowed to attend the hearing.

7. If the Committee determines that no disciplinary action is warranted, it shall so advise the complainant and file a report. If the Committee determines that disciplinary action is warranted, it shall advise the respondent of same.
8. Within a reasonable time following the hearing, the Committee shall make findings of fact and recommendations as to disciplinary action that should be taken.

8.1 Such recommendation shall be carried out by NMEDA not more than fifteen (15) days, (within the 90 day completion time-frame) of respondent's receipt of the finding unless the respondent appeals and the Board stays implementation.

9. Complainants and respondents shall be responsible for their own expenses, including travel expenses and expenses of legal representation.

### **I. APPEALS PROCEDURE**

1. The respondent may appeal the decision of the Committee to the NMEDA Board of Directors.
2. Any appeal must be in writing, state the specific reasons the respondent believes the work and/or decision of the Committee is incorrect and must be received at the NMEDA headquarter offices within ten (10) business days of the respondent's receipt of the Committee's ruling.
3. The Board shall review, assess and make its findings based on the record in the Committee's file. No new evidence or testimony will be considered unless it can be shown that it was reasonably not known or available at the time that the Committee conducted its review.

3.1 If there is any new testimony, evidence, or hearing by the Board, it will be conducted as set forth above (this will be solely at the discretion of the Board).

4. The Board's ruling shall be final.



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### J. DISCIPLINE

1. NMEDA reserves the right to take whatever action deemed appropriate under the circumstances, based on the facts and solely within the judgment of the NMEDA body reviewing the matter. Possible disciplinary actions are listed below. This is a representative list of actions and NMEDA reserves the right to implement any or all of them and /or any other course of action deemed necessary.
2. NMEDA's disciplinary options include, but are not limited to:
  - 2.1 Issuing a written warning (which will be kept in the member's file for no less than three (3) years)
  - 2.2 Membership suspension (for a period to be determined by NMEDA, but not to be less than one (1) year); and
  - 2.3 Indefinite Suspension.
  - 2.4 Two unresolved complaints within a 12 month period will automatically call for a one year suspension
  - 2.5 All disciplinary suspensions must be approved by the Board of Directors.
3. The Committee shall keep appropriate permanent records, which need not identify the individuals involved, that catalogue the nature of the violation, circumstances surrounding the matter (e.g., this was the individual's third infraction, the severity of the alleged act, whether it was legally addressed) and the disciplinary actions then assessed to the violation. These records will serve as a precedential resource for future Committees to utilize when considering like violations.

**NOTE:** The foregoing policy may be amended at any time solely at the discretion of the NMEDA Board of Directors. Members shall be made aware of any such amendments via communication on the NMEDA website and annually at appropriate live venues. The current policy shall otherwise be made available on-line for education and inspection.