



Information on panel hearings

20 January 2012

Under the *Health Practitioner Regulation National Law Act (National Law)* as in force in each state and territory, the Medical Board of Australia (the Board) has the power to take a range of actions after receiving a notification, after investigating a registered medical practitioner, or after conducting a health or performance assessment.

These actions can include:

- a decision to take no further action
- referral to another entity such as a health complaints entity or
- taking immediate action if this is necessary to protect the health and safety of the public. More information is published on immediate actions at www.medicalboard.gov.au.

If the Board believes that a practitioner's conduct or performance was unsatisfactory or that his or her health was impaired, it can:

- caution the medical practitioner and/or
- accept an undertaking from them and/or
- impose conditions on the practitioner's registration.

Alternatively, the Board may decide to refer a matter to a health or performance and professional standards panel or a tribunal.

Health panels

The Board may establish a health panel if it decides it is necessary or appropriate to do so and believes that a registered practitioner or student has or may have an impairment.

A health panel consists of at least three members, selected from a list of approved persons. In the case of medicine, at least two members must be registered medical practitioners. One of the medical practitioners must have expertise relevant to the matter that is the subject of the hearing. The third member must not be a registered medical practitioner.

Performance and professional standards panel

The Board may establish a performance and professional standards panel if it decides it is necessary or appropriate to do so and believes that because of a notification, or for any other reason that:

- a. the way a registered medical practitioner practises is or may be unsatisfactory or
- b. the registered medical practitioner's professional conduct is or may be unsatisfactory.

A performance and professional standards panel consists of at least three members, selected from a list of approved persons. At least half, but no more than two-thirds of the members of the panel must be registered medical practitioners and at least one person must represent the community.

Notice of hearing

The practitioner or student who is the subject of a panel hearing must be given notice of the hearing. That notice includes the nature of the hearing and details of the matters to be considered at the hearing. A practitioner or student is given adequate notice of the allegations to be raised and time to be able to consider the allegations, prepare a response or arguments about the issues in question, or to give an explanation as to why, for example, the practitioner's conduct was reasonable in the circumstances.

The notice must also state:

- the day, time and place at which the hearing is to be held
- that the registered medical practitioner or student is required to attend the hearing
- that the registered medical practitioner or student may be accompanied by an Australian legal practitioner or other person
- that if the registered medical practitioner or student fails to attend the hearing, the hearing may continue and the panel may make a decision in the absence of the practitioner or student and
- the type of decision the panel may make at the end of the hearing.

Procedure of a panel

The National Law states that a panel may decide its own procedures, though it must observe the principles of natural justice.

The panel is provided with a copy of all relevant information supplied by the notifier and practitioner that has been gathered by the investigator. Panel members will have read all the material before the hearing. The medical practitioner or student who is the subject of the hearing will have been provided with the same material as the panel and will have had the opportunity to read all the material and to prepare a response.

Panel hearings are informal and inquisitorial. The panel will ascertain the relevant information by interviewing the notifier (in most cases) and the practitioner. Notifiers and practitioners or students are interviewed separately and arrangements are made to avoid them meeting at the hearing. It is usual for the practitioner to be interviewed for about 30 to 45 minutes.

At the start of the hearing, one of the panel members (usually the Chair) will introduce panel members, state the purpose of the hearing and explain the allegations to be considered. The Chair will also explain the procedures which will apply at the hearing. Before the practitioner is interviewed, the Chair will summarise for the practitioner the information provided by the notifier.

Practitioners and students are given sufficient opportunity to make submissions, but the panel is not required to give extensive time to arguments that it considers do not have merit or are irrelevant to the decision that the Panel needs to make.

The panel may have regard to a report prepared by an assessor about the practitioner or student, and to any other information it considers relevant to the hearing. During the hearing, the panel may decide it requires further information on a specific issue and it may be necessary to adjourn to obtain this.

Referral to a tribunal

The panel must stop hearing a matter and require the Board to refer the matter to a tribunal if:

1. the practitioner or student who is the subject of the hearing asks the panel for the matter to be referred to the responsible tribunal or
2. the hearing is about a registered medical practitioner and:
 - a. the panel reasonably believes the evidence demonstrates the practitioner may have behaved in a way that constitutes professional misconduct or
 - b. the panel reasonably believes the evidence demonstrates the practitioner's registration may have been improperly obtained because the practitioner or someone else gave the Board information or a document that was false or misleading in a material way.

Presence of others at the hearing

There are not usually witnesses at a panel hearing. Panels tend to rely on witness statements.

The National Law allows a practitioner to be accompanied by a legal practitioner or another person.

The panel has the discretion to decide whether or not the legal representative or another person speaks for the practitioner at the hearing. The panel is likely to consider factors such

as the practitioner's ability to participate in the process, the complexity of the material to be considered, the gravity of the allegations and the nature of the notification.

The practitioner and/or a representative of the practitioner cannot be present when the notifier is interviewed.

Panel hearings are not open to the public.

The standard of proof in a panel hearing

The standard of proof for a panel hearing is the civil standard known as 'satisfaction on the balance of probabilities' that the allegations occurred. This means that the panel must be reasonably satisfied that the allegations made against the practitioner actually occurred.

Decision of a panel

After hearing a matter about a medical practitioner, the panel may decide that the practitioner has no case to answer and no further action is to be taken in relation to the matter. Alternatively, it can decide one or more of the following:

1. the practitioner has behaved in a way that constitutes unsatisfactory professional performance
2. the practitioner has behaved in a way that constitutes unprofessional conduct
3. the practitioner has an impairment
4. the matter must be referred to a responsible tribunal and/or
5. the matter must be referred to another entity for investigation or other action.

After hearing a matter about a student, a health panel may decide the student:

1. has no case to answer and no further action is to be taken or
2. has an impairment or
3. that the matter must be referred to another entity for investigation or other action.

If a panel decides that a registered medical practitioner or student has an impairment, or that the practitioner has behaved in a way that constitutes unsatisfactory professional performance or unprofessional conduct, the panel may decide to do one or more of the following:

1. impose conditions on the registration of the practitioner or student
2. for a health panel, suspend the registration of the practitioner or student and/or
3. for a performance and professional standards panel, caution or reprimand the practitioner.

Notice to be given about a panel's decision

In some cases, the Chair of the panel may provide verbal feedback to the practitioner about the panel's decision.

The panel must give notice of its decision to the Board as soon as practicable after making the decision.

The Board must, within 30 days after the panel makes its decision, give written notice of the decision to the registered medical practitioner or student who is the subject of the hearing. This includes providing the practitioner with the decision made by the panel, the reasons for the decision, that the practitioner or student may appeal against the decision, information about how an application for appeal may be made and the period within which the application must be made.

Note

The Medical Board of Australia has delegated all powers necessary to deal with individual practitioner's registration and notifications. References to "the Board" in this document mean "the delegated decision-maker".