



INFORMATION FOR PARTIES TO PROFESSIONAL STANDARDS COMMITTEE INQUIRIES

1. Overview

The purpose of these notes is to briefly explain to the parties some of the processes involved in a Professional Standards Committee (PSC) Inquiry. The notes are prepared by the Board for the assistance of parties appearing before a PSC and must be read in conjunction with the applicable legislation and/or any relevant case law.

1.1 Legislation

PSCs are convened and conducted in accordance with the provisions of the *Medical Practice Act 1992*. Parties should familiarise themselves with the following parts of the Act:

Section 2A
Part 4, Division 4
Part 6, Division 1
Part 12
Part 14
Schedule 2

2. Legal advice

It is strongly recommended that when a medical practitioner receives notification that a PSC is to be convened that he or she obtains legal advice from either a medical defence organisation or a legal adviser. Neither the staff of the Board nor the PSC members can provide legal advice to practitioners who elect to represent themselves.

3. Nature of Professional Standards Committee Inquiries

A PSC is convened to deal with a formal complaint that has been referred to it under the *Medical Practice Act*. In most circumstances this consists of a complaint against a practitioner which is prosecuted by the Health Care Complaints Commission (HCCC) acting as the nominal complainant. Although PSC members are appointed by the Medical Board, a PSC is a separately constituted body and is independent of the Board. The hearing is a public hearing, unless all or part of it is directed to be closed by the PSC. The hearing is conducted as an Inquiry with all PSC members being free to ask relevant questions directly of the parties and any witnesses. The PSC will endeavour to ensure a proper and fair hearing is conducted in a manner that is not too overly legalistic.

A PSC can deal with a complaint and make appropriate orders even if the practitioner is no longer registered.

A PSC does not have the power to suspend or deregister a medical practitioner and in fact a PSC must immediately terminate an inquiry if during its course it forms the opinion that the complaint may provide grounds for suspension or deregistration. That said, in appropriate cases a PSC can make a recommendation to the Medical Tribunal that a person be suspended or deregistered on the grounds of impairment.

If a complaint before a PSC is proved, or if the practitioner admits the complaint in writing, a PSC has the power to do any one or more of the following:

- caution the practitioner;
- reprimand the practitioner;
- order medical or psychiatric treatment or counselling;
- direct that conditions be imposed on the person's registration, including critical compliance conditions;
- order a person complete educational courses;
- order that the person report on his or her medical practice;
- order that the person seek and take advice in relation to the management of his or her medical practice; and/or
- impose a fine.

In exercising any of its powers, the PSC must take into account the protection of the health and safety of the public as this is the paramount consideration under the *Medical Practice Act*.

4. Preparation for hearing

4.1 Appointment of PSC members

The Board will appoint the four members of a PSC, who will always consist of two registered medical practitioners and two lay persons, one of whom is legally qualified and who also acts as the Chairperson.

The parties will be advised of the appointments as soon as practicable. The practitioner should advise the Board in writing as soon as possible if they consider that the appointment of a person may raise issues of bias or potential bias so that the Board can consider the appointment. Prior to appointment the members are also asked to consider for themselves whether there might be any issue of bias or perceived bias.

4.2 Board Legal Officer's role

A designated Legal Officer of the Board will be responsible for all correspondence with the parties to a PSC and will assist the PSC members throughout the Inquiry. Any inquiries from the parties about procedural matters should be directed to that Legal Officer.

4.3 Timetable to hearing

The parties will be advised of the details of the PSC hearing as soon as practicable. The Board will also provide the parties with a timetable to prepare the matter for hearing. This timetable generally includes an initial date for the HCCC to provide the documents they seek to rely on, a subsequent date for the practitioner to provide any further documents he/she seeks to rely on, dates for the issuing of any Summonses or Notices to Produce, and a date for a directions hearing. It is expected that the timetable will be complied with to allow the matter to be properly prepared for hearing.

4.4 Summonses and Notices to Produce

Parties should approach the Board's Legal Officer if they seek to have any Summonses or Notices issued in accordance with Schedule 2. It will assist the Chairperson or PSC member dealing with such a request if information is provided as to the relevance of the request to the Inquiry.

4.5 Provision of documents by the parties

Parties should provide to the Medical Board's Legal Officer with five copies of the documents they seek to rely on in the PSC Inquiry. (One copy will be forwarded to each PSC member and the fifth copy will be retained by the Board.) If there are more than a few documents, they should be indexed. Five copies of any subsequent documents will also need to be provided, and any indexes will need to be amended as appropriate. This preparation greatly assists all who will be present at the hearing and referring to those documents.

4.6 Directions hearing

A directions hearing will be held as a teleconference unless one or both parties indicate beforehand that a directions hearing in person would be more appropriate. (For example, if a party has objections to the contents of certain documents it may be preferable that the parties attend in person. All present can then make sure they are considering the same document.) It is expected that the PSC Chairperson, the Board's Legal Officer, the subject practitioner and/or his or her representative, and the representative of the HCCC will participate in the directions hearing.

The parties should be in a position to advise whether they have any objections to the contents of any documents provided by the other party and to discuss the basis for any such objections. The parties should be in a position to advise whether they require witnesses for cross-examination and when their own witnesses can be available to attend the Inquiry if required. The directions hearing is an opportunity to discuss exactly what matters remain in dispute between the parties and to narrow the scope of the hearing if appropriate. The Chairperson may also indicate how the PSC might be assisted in their Inquiry. Parties should be in a position to estimate/confirm the length of the hearing. One directions hearing is generally sufficient to prepare the matter for hearing. If further directions appear to be required in a matter, the parties should approach the Board's Legal Officer.

4.7 Section 127C – Requirement to provide information

Immediately prior to the PSC Inquiry the Board's Legal Officer will require information/confirmation from the subject practitioner pursuant to section 127C and 191B (typically the practitioner's past and present employment and registration information). The provision of this information ensures the Board can comply with statutory duties, such as notifications of an outcome from the Inquiry.

5. Professional Standards Committee hearing

5.1 Inquiry procedure

The parties are entitled to be accompanied by an Australian Legal Practitioner or other adviser and should feel free to seek the assistance of their adviser at any time. An Australian Legal Practitioner may not represent either party. Another adviser may represent the practitioner. (In the near future the parties will be entitled to legal representation. This will be the case when changes to section 177 of the *Medical Practice Act* come into force, on a date to be proclaimed.)

The Act requires a PSC to conduct proceedings on an Inquiry as it thinks fit. The PSC must accord procedural fairness to the parties, but is not required to comply strictly with the rules of evidence. Despite any representation and assistance the practitioner may have, the PSC members will expect to be able to communicate directly with the practitioner during the Inquiry. It is generally envisaged that a

practitioner's representative can best assist the Inquiry by questioning witnesses on behalf of the practitioner and by assisting in the preparation of any submissions.

5.2 Premises

PSC Inquiries are conducted on the premises of the Industrial Relations Commission at 47 Bridge Street, Sydney.

5.3 Listing of matters and non-publication directions

On the day of the hearing, a list with hearing room details will be posted outside the IRC registry. The Board also lists on its website matters to be heard before a PSC Inquiry one week before the hearing is due to commence (www.nswmb.org.au). Matters will not be listed elsewhere in the media.

Parties and any interested members of the public should always be alert to the possibility of non-publication directions being made in relation to the practitioner's name, the subject matter of the complaint, or details of any of the witnesses in the hearing. Such non-publication directions can be made before or during a PSC hearing and it is an offence to breach any non-publication direction. If a non-publication direction is operating, a copy of the direction will be posted outside the hearing room door.

5.4 Recording of proceedings

PSC Inquiries are audio recorded for the purpose of maintaining an accurate record of the proceedings and to protect the lawful interests of the parties and the PSC members. A CD of the recording will be retained by the Board. Parties may request in writing a copy of the CD, at no cost. No other persons will be provided with a copy of the recording. A transcript will not be provided.

5.5 Evidence

It is expected that the subject practitioner will attend and give evidence to the Inquiry. Should the practitioner not attend, the PSC is able to proceed in their absence provided that they have been given notice. The PSC members expect to address the parties directly and are best assisted by any representative if they confine their representation to the examination and cross-examination of witnesses and to the making of closing submissions.

5.6 Submissions

The parties should expect to be able to provide oral submissions at the conclusion of the PSC Inquiry unless they have previously discussed with the PSC that written submissions might be more appropriate. If written submissions are to be provided, a timetable will be set for their receipt.

The PSC is assisted if submissions are kept brief (dot point form is generally acceptable). Matters of interest to the PSC are:

- Comments on the strength or weakness of relevant evidence;
- If particulars seem to be proved and if so, whether they amount to proof of the complaint;
- Any appropriate orders;
- Whether any non-publication orders seem appropriate and on what basis;
- Whether the PSC should direct the Board not to publish the written decision on its website and on what basis;
- Who should receive a copy of the PSC's decision and on what basis.

6. Post-hearing

6.1 Written decision

The PSC will endeavour to provide a written statement of its decision as soon as possible after the oral hearing has concluded and any written submissions have been received and considered. That decision will contain reasons for the decision. It is a matter for each PSC whether it delivers its findings prior to delivering its written reasons, and it is a matter for each PSC whether they request the doctor to attend for the delivery of its decision or whether the decision will be provided in the mail. Delivery by mail is most common.

6.2 Provision of written decision

The PSC will include as part of its decision the names of who should receive a full copy of the written statement of decision. It may be that the PSC considers an appropriately worded letter with the outcome of the Inquiry be provided to someone instead of the full decision. These are matters that the parties may wish to address in their final submissions.

6.3 Publication of decision

The PSC's written decision will usually be published on the Board's website, the exception being if the PSC directs otherwise. The Medical Board may also provide copies of the PSC's written decision to other persons as it sees fit. Any publication of the PSC's written decision is subject to any non-publication directions contained within the decision itself. It is an offence to not comply with such non-publication directions.

6.4 Appeal rights

The parties can appeal a PSC's decision to the Medical Tribunal in accordance with the provisions of sections 87 and/or 88 of the *Medical Practice Act*.

6.5 Right of review

The subject practitioner may apply to the appropriate review body in respect of a PSC's order that conditions be placed on their registration. The appropriate review body is the Medical Tribunal unless the PSC's order that is being reviewed nominates the Medical Board as the appropriate review body. It is suggested that consideration in final submissions can be given as to the appropriate review body should conditions be placed on the practitioner's registration. (See Division 3 of Part 6 of the *Medical Practice Act*).

6.6 Notification of outcome of inquiry

If the complaint is proved and orders are made by the PSC, such orders are recorded in the online Register of Medical Practitioners for New South Wales (www.nswmb.org.au). Also, in accordance with sections 190 and 191B of the *Medical Practice Act*, the Board is required to make certain notifications of orders made by a PSC.

7. Enquiries

Enquiries from the parties should be directed to the Board's Legal Officer responsible for assisting the PSC.
Enquiries from the public should be directed to the Board's Community Relations Officer on 9879 2200.