



**Professional Conduct
Review Panels**

Queensland Government

**A GUIDE
TO
PROFESSIONAL CONDUCT
REVIEW PANEL
HEARINGS**

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PROFESSIONAL CONDUCT REVIEW PANEL PROCEDURAL GUIDELINES

1 OVERVIEW

A professional conduct review panel is one of three disciplinary bodies established under the *Health Practitioners (Professional Standards) Act 1999* (the Act) to discipline registered health practitioners (including health practitioners who were formerly registered). The health practitioners who are subject to this Act are chiropractors, dentists, dental auxiliaries, dental technicians, dental prosthetists, medical practitioners, medical radiation technologists, occupational therapists, optometrists, osteopaths, pharmacists, physiotherapists, podiatrists, psychologists and speech pathologists. They are registered under thirteen separate health practitioner registration Acts.

Under the Act, the purposes of disciplinary proceedings and disciplinary action against health practitioners are to –

- protect the public
- uphold standards of practice within the health professions
- maintain public confidence in the health professions

The functions of a professional conduct review panel include conducting a hearing and making decisions relating to disciplinary matters about a practitioner, other than those disciplinary matters that may, if proven, provide a ground for suspending or cancelling the practitioner's registration. Under the Act, these most serious matters must be referred to the Health Practitioners Tribunal.

Complaints about health practitioners are made to the registration boards and the Health Rights Commission (HRC).

The registration boards' functions include –

- conducting investigations on the basis of complaint (either referred by the HRC or made directly to the Board), or on their own initiative, about the conduct and practice of their practitioners
- dealing with those minor disciplinary matters that can be satisfactorily addressed through undertakings, advising, cautioning or reprimanding
- bringing disciplinary proceedings relating to their practitioners before panels or the tribunal
- implementing orders of panels or the tribunal relating to their practitioners

Each panel may conduct its proceedings as it sees fit.

To assist the conduct of hearings by a panel, the Professional Conduct Review Panels Secretariat has developed the following guidelines. These guidelines have been developed in consultation with the Executive Officer, Office of Health Practitioner Registration Boards, registration boards, the Health Rights Commissioner and medical defence organisations, to inform members of the panels of assessors, parties and interested persons of the way many disciplinary matters will be conducted.

These guidelines will be reviewed on a regular basis.

2 PRE-HEARING

2.1 Referring a Disciplinary Matter

2.1.1 Referral Notice

A board refers a disciplinary matter to a professional conduct review panel under s.126, by filing a referral notice with the secretary.

Following the referral, the secretary will –

- by phone, contact proposed panel members to discuss –
 - whether the member has any personal or professional connection with the practitioner, and if so, the circumstances of that connection
 - availability
 - timetable for pre-hearing conference/s
 - time and place of hearing, etc
- within a week, convene a panel by written notice to members (s.15)
- notify the practitioner (first notice) of -
 - the referral
 - the ground for the disciplinary action
 - the facts and circumstances forming the basis of the ground
 - proposed panel members and requesting information as to whether the practitioner has a personal or professional connection with any of them, and if so, the circumstances of that connection
 - that on receipt of the formal hearing notice he or she may elect, within 14 days, to have the matter dealt with by the Tribunal
- as soon as possible arrange an initial conference with representatives of the parties to discuss a timetable for the proceedings, the documents to be filed, the length of the hearing etc
- as soon as possible give a formal notice of the hearing and a timetable for the hearing to the following-
 - the practitioner
 - the board
 - any complainant
 - the Health Rights Commissioner

2.1.2 Hearing Notice

The hearing notice must state the following –

- the ground for the disciplinary action against the practitioner
- the facts and circumstances forming the basis for the ground
- the time and place of the hearing
- that the practitioner must attend the hearing
- that the board may nominate a board member or other person to appear on behalf of the board
- that the complainant, if any, may attend the hearing, unless the panel directs that the complainant must not attend before giving evidence
- that the practitioner, board's nominee or complainant may be accompanied by a lawyer or another person
- if the practitioner was not given a notice under s.120 – that the practitioner may, within 14 days after receiving the hearing notice; elect to have the matter dealt with by the tribunal

The time for the hearing must be at least 14 days after the practitioner receives the hearing notice (s.174).

2.2 A Professional Conduct Review Panel

The panel must consist of at least 3 and not more than 4 members. The secretary will determine the size of the panel by having regard to the nature of the disciplinary matter. It is expected that most panels will have 3 members.

The board will indicate to the secretary whether the matter raises issues of a specialist or technical nature and, if so, the desirable background or skills of the professional members of the panel. The secretary must have regard to the board's advice in selecting members of the panel (s.19). The board may nominate only one of its members for appointment to the panel (s.20) and if it does so the secretary must appoint that person.

For all panels, at least 2 members must be from the practitioner's profession (ie. a member of the relevant professional panel of assessors or a practitioner member of the relevant board) and at least one member must be a member of the public panel of assessors.

If the matter relates to a complaint by an individual, the panel must include at least one member who is the same gender as the complainant (s.18).

Within the parameters of these provisions the secretary will have flexibility in determining the composition of a panel. An additional member of the profession could be involved in the hearing of matters related to clinical practice; an additional member of the public could be involved in the hearing of matters related to professional conduct; or a board member could be involved in a hearing of matters raising complex legal issues.

Apart from the board's advice, the secretary, in selecting a panel, will have regard to the curricula vitae provided by members of the panels of assessors, the availability and interest of the members and their experience.

A panel is chaired by a member of the professional panel of assessors chosen by the secretary (s.21).

The secretary must be satisfied that the panel members do not have a personal or professional connection with the practitioner that may prejudice the way in which they perform their functions as members of the panel (s.18) (see below – Conduct of Proceedings - Natural Justice).

All communication between the parties and the panel must be through the secretary.

A panel is not a permanent or ongoing entity. It ceases to exist when it has performed its functions or is no longer able to perform its functions. For example, a panel ceases to exist when –

- it decides the matter referred to it (s.200 & s.324)
- it directs the referral of a matter to the tribunal or board (s.178)
- a practitioner elects to have a matter referred to the tribunal (s.177)
- a panel member is absent and the practitioner does not consent to the remaining members continuing to hear the matter (s.189)

2.3 Parties

The parties to disciplinary proceedings before a panel are –

- the practitioner
- the practitioner's board
- if the commissioner intervenes under s.130 of the *Health Rights Commission Act 1991*, the commissioner

2.4 Documents

The board should provide the secretary, the practitioner, and the commissioner, where the commissioner is a party, with the documentary evidence it will rely on in accordance with the timetable established at the initial pre-hearing conference.

The practitioner should provide the secretary, the board, and the commissioner, where the commissioner is a party, with his or her documents in accordance with the timetable established at the initial pre-hearing conference.

Documentary evidence should be indexed, tabbed and bound or secured in a folder.

The secretary should be provided with four copies of the documents for distribution to the panel.

Any additional material provided at a later time, including after a pre-hearing conference, should -

- be sent to the other party(s), and 4 copies sent to the secretary for distribution to the panel
- include an amended index which reflects the additional material

2.5 Adjournments

The panel may adjourn the hearing (s.187).

If, during disciplinary proceedings, it appears to the panel that another disciplinary matter relating to the practitioner exists, the panel may deal with it in the same proceedings, and may if the practitioner agrees, continue with the proceedings or adjourn the proceedings for a particular period. If the practitioner does not agree, the panel must adjourn the proceedings for the period it considers fair in the circumstances, before continuing the proceedings (s.172).

A party requesting an adjournment should, at the earliest opportunity prior to the pre-hearing conference –

- communicate the reasons for adjournment to the secretary for forwarding to the chairperson
- notify the other party(s) of the reasons for the request

The application will usually be considered at a pre-hearing conference.

Requests for adjournment after the pre-hearing conference should only be made in exceptional circumstances. If a request for adjournment is made after the pre-hearing conference, the panel may consider the request. The panel may request a response from the other party.

2.6 Pre-hearing Conference

The panel may delegate the power to hold a pre-hearing conference to the secretary.

At least one pre-hearing conference will be held, and directions about the matter given. Usually a pre-hearing conference will be held as soon as possible after a referral is made. A subsequent pre-hearing conference may also be required. A conference may be held, and directions given, on the application of a party or on the panel's own initiative (s.176).

Usually only the parties' representatives will attend the conference. The parties may, but need not attend where they are represented. A complainant will not attend. The initial pre-hearing conference will usually be held by the secretary. Subsequent pre-hearing conferences may be conducted by the secretary or the panel chairperson.

The purposes of a pre-hearing conference include –

- establishing the persons to whom attendance notices are to be issued and their connection to the disciplinary matter
- determining a timetable for calling witnesses (in general, witnesses to the facts will be called prior to expert witnesses)
- determining a date for serving material
- estimating the length of the hearing
- establishing admissions or denials in relation to the particulars
- clarifying the issues in dispute

At or after the conference, the secretary or chair may give directions about the matter or proceeding as he or she considers appropriate including –

- directions requiring parties to make discovery or allow inspection of evidentiary material
- directions that parties supply other material including:
 - a chronology of events
 - a curriculum vitae of the practitioner or witnesses
 - registration details in other jurisdictions
 - any relevant previous decision, including any about the practitioner, by a disciplinary body (including a foreign disciplinary body) or the Medical Assessment Tribunal
 - a list of agreed facts
 - a list of exhibits
 - names and addresses of additional witnesses

A conference may be held and directions given by telephone, video link or another form of communication, at the discretion of the secretary or chair.

2.7 Outcome of Pre-hearing Conference

Following the pre-hearing conference the secretary will –

- correspond with the parties and the panel to confirm the matters determined at the conference
- if necessary, provide the panel with any documents supplied by the parties and where necessary indicate if the documents are subject to objection

2.8 Non-compliance with Directions

If it comes to the panel's notice that a party has not adhered to the timetable or the directions given at the conference the panel may –

- order a further pre-hearing conference
- adjourn the hearing
- decline to admit evidence
- proceed with the matter

2.9 Attendance Notices

Under s.186 of the Act, a party may apply to the secretary, in the approved form, for an attendance notice to be given to a person.

An attendance notice compels the person to attend the hearing at a stated time and place to give evidence or answer questions, or to produce things, including documents.

Unless the secretary reasonably believes that it is unnecessary or inappropriate, the secretary will give the attendance notice.

2.10 Witnesses

The timetable will provide the parties with an outline of the dates relevant to the hearing. Parties are expected to ensure that witnesses are available at the time set down for the hearing.

Under s.193 of the Act, the party calling the witness must pay their costs. A witness allowance is prescribed under the *Health Practitioners (Professional Standards) Regulation 2000*.

Witnesses may be tendering sensitive evidence and where this is likely to be the case, should be encouraged to seek the support of a friend, relative or other person during the hearing.

3 HEARING

3.1 General

It is intended that panels will operate relatively informally. Where appropriate, the panel is to act in a collaborative and re-directive way to determine –

- whether a practitioner satisfies the grounds for disciplinary action
- the appropriate sanction to be imposed to achieve the objects of the Act

The prohibition on legal representation will assist the hearing to be informal and non-adversarial.

Hearings will be held during business hours.

At the commencement of the hearing the chairperson will –

- refer the parties to the document Information for Parties Appearing Before the Professional Conduct Review Panel
- attend to procedural matters eg. tendering of documents, objections
- provide each party with an opportunity to clarify the issues in dispute

3.2 Who may Attend Hearing

The parties, and any person given an attendance notice, must attend the hearing (s.195).

The board may nominate a board member or other person, other than a lawyer, (the board's nominee) to appear at the hearing on behalf of the board (s.182).

At the hearing, the practitioner, complainant and board's nominee may be accompanied by a lawyer or another person. The lawyer or other person is not entitled to appear on behalf of the practitioner or nominee. However, the panel may, if it considers it appropriate or necessary, allow a person, other than a lawyer, to address the panel on behalf of the practitioner or the board's nominee.

The complainant may attend the hearing and may be accompanied by a lawyer or other person.

The secretary, or a person appointed by the secretary (who may be a lawyer) may assist the panel at the hearing. The secretary or other person may advise the panel about procedural matters relevant to the hearing but may not ask questions of the parties or other persons appearing at the hearing (s.185).

At the hearing the panel may proceed in the absence of a party if it reasonably believes the party has been given notice of the hearing (s.187).

3.3 Conduct of Proceedings

Section 179 of the Act refers to the conduct of proceedings.

The chairperson of the panel may decide the procedures to be followed for the hearing. However, the panel must comply with Part 6, Division 5 of the Act.

The panel, in conducting the hearing –

- must comply with the rules of natural justice, and ensure the parties have the fullest opportunity practicable to be heard (see below – Natural Justice)
- must act as quickly and with as little formality and technicality as is consistent with a fair and proper consideration of the issues before it
- is not bound by the rules of evidence
- may inform itself of anything in the way it considers appropriate

The panel must tell the parties to the disciplinary proceedings –

- the facts and circumstances forming the basis for the ground for disciplinary action against the practitioner
- the possible disciplinary action the panel may take under s.201 or s.203 of the Act

If asked to do so by a party, the panel must explain to the party any aspect of the panel's procedures, or decisions or rulings relating to the hearing (s.179).

The hearing is not open to the public (s.181).

Important hearing powers, additional to those provided by the Act, are conferred on the panel by s.27 of the *Acts Interpretation Act 1954*. They are the powers to:

- receive evidence
- examine witnesses
- administer oaths to witnesses

If a thing is produced to a panel at a hearing, the panel may inspect it (s.191). If the panel reasonably believes the thing may be relevant to the hearing it may –

- photograph it
- for a document, copy it or take an extract from it
- keep the thing while it is necessary for the hearing and any appeal relating to the hearing

If the panel keeps the thing, it must permit a person otherwise entitled to possession of the thing to –

- for a document – inspect, make a copy of, or take an extract from, the document, at the reasonable time and place the panel decides
- for another thing – inspect or photograph the thing, at the reasonable time and place the panel decides

If a complainant is to give evidence at the hearing, and the panel reasonably believes the attendance of the complainant before giving evidence would seriously prejudice the fairness of the hearing, the panel may direct that the complainant be excluded until he or she gives evidence (s.183).

The panel may direct a person attending the hearing, other than the practitioner, to leave if the person is disrupting the hearing (s.184).

3.3.1 Record of Evidence

The panel must keep a record of the evidence given to it in the way it considers appropriate. Panel members should keep their own accurate and complete records of the evidence. To ensure that the record is complete, in the event of review or appeal, the proceedings will also be recorded.

The panel is not required to transcribe the disciplinary proceedings unless asked to do so by a party. The request for transcription must be made to the secretary at least 2 weeks prior to the commencement of the hearing.

The cost of transcription is to be paid by the party making the request, and if more than one, then the costs are to be shared equally (s.194).

3.3.2 Natural Justice

There are three limbs to the common law rules of natural justice (procedural fairness) as follows –

- a party must be given a reasonable opportunity to present his or her case before a decision is made that adversely affects his or her interest
- a party must have reasonable notice of adverse matters alleged against him or her
- a decision-maker (the members of the panel) must be impartial and unbiased

3.4 Witnesses

Parties are to ensure that persons given an attendance notice are –

- available as set down at the pre-hearing conference
- supported at the hearing by a friend, relative etc. if appropriate
- accommodated appropriately
- provided with relevant documents (eg copy of their statements)
- ushered into the hearing at the appropriate time
- provided with a copy of the document Information Sheet for Witnesses supplied by the secretariat

3.5 Submissions

A panel should seek closing submissions from the parties. These submissions are generally oral. However, the panel may request written submissions. The parties should be directed to address –

- the facts of the case
- the evidence
- any admissions made by the practitioner
- whether the particulars, if proven, lead to a finding of unsatisfactory professional conduct
- any relevant previous decision by a disciplinary body (including a foreign disciplinary body) or the Medical Assessment Tribunal
- any relevant codes of practice
- the disciplinary action, if any, to be imposed by the panel
- whether the recording of the details of any disciplinary action on the board's register would not be in the interests of users of the practitioner's services or the public

3.6 Interim Orders

Where a panel reasonably believes it is necessary to make an interim order of the kind it could make at the conclusion of disciplinary hearings, it can make an interim order (s.190).

An interim order will most likely be made where it is necessary to adjourn the proceedings and the panel considers an interim order should be made to protect the public.

The interim order must be the least onerous order necessary in the circumstances.

The interim order has effect from the time it is made and ends when the first of the following happens –

- the proceedings in which the order is made end
- the time stated in the order for it to end arrives
- the panel revokes the order

Where a panel imposes an interim order it may also direct the practitioner's board to include details of the order in the board's register.

The practitioner's board must give effect to the interim order and comply with the panel's directions.

3.7 Additional Matters

3.7.1 Protection

A panel member has the same protection and immunity as he or she would have as a District Court Judge performing the functions of a judge (s.386(2)).

Parties and witnesses appearing before a panel have the same protection and immunity as they would have as parties or witnesses in a proceeding within the District Court (s.386(5)&(6)).

3.7.2 Offences

It is an offence for a practitioner given a hearing notice, and persons given attendance notices, to fail to attend or continue to attend the hearing, take an oath or affirmation, answer a question or produce a thing unless the person has a reasonable excuse (s.195). A reasonable excuse for an individual to fail to answer a question or produce a thing is that answering the question or producing the thing might tend to incriminate the individual (s.196).

A person must not state anything to a panel that the person knows is false or misleading in a material particular (s.197).

A person must not give to a panel a document containing information the person knows is false or misleading in a material particular. This does not apply where the person, when giving the document, informs the panel, to the best of his or her ability, how it is false or misleading and gives the correct information to the panel, if he or she has, or can reasonably obtain, it (s.198).

3.7.3 Contempt

A person at a hearing before a panel must not –

- insult the panel or a member of the panel
- deliberately interrupt the hearing
- create or continue or join in creating or continuing, a disturbance in or near a place where the panel is conducting the hearing
- without lawful excuse disobey any lawful order or direction of the panel
- do anything else that would be contempt of court if the panel were a court of record (s.199)

3.8 Certain Matters to be Referred to the Tribunal or Board

If the practitioner was not the subject of an investigation under the Act and not given a notice under s.120, he or she may, within 14 days after receiving the hearing notice, elect to have the matter dealt with by the tribunal. The practitioner must give the panel written notice of this election (s.177).

As soon as possible after receiving the notice the panel must direct the practitioner's board to refer the matter to the tribunal.

The tribunal must deal with matters warranting suspension or cancellation of registration.

If the panel, before or during the hearing, forms the opinion that the matter may provide grounds for suspension or cancellation, the panel must direct the board to immediately refer the matter to the tribunal (s.178). Sexual misconduct matters must be referred to the Tribunal.

The panel may also, where it considers it appropriate, direct the board to –

- refer other matters for hearing by the tribunal eg if the panel becomes aware that another complaint about the practitioner has been referred to, or is being heard by, the tribunal
- deal with a matter under the impairment part

A panel will only refer matters back to the board where the issues relate solely or principally to impairment.

If the panel directs the board to refer the disciplinary matter for hearing by the tribunal, the panel –

- must prepare a statement stating why it considers the matter must be referred to the tribunal
- may prepare any comment or other information about the matter it considers appropriate

If the panel directs the board to deal with the disciplinary matter under the impairment part, the panel –

- must give the board a statement stating why it considers the matter must be dealt with under the impairment part
- may give the board any comment or other information about the matter it considers appropriate

The board must refer the matter for hearing by the tribunal, or deal with it under the impairment part, as soon as practicable.

3.9 Making a Decision

Prior to arriving at a decision the panel must consider all of the evidence before it.

The evidence may have been obtained orally, or contained in the reports or statements of witnesses or experts.

The panel may require the parties to wait while it considers its decision. Alternatively, the panel may defer its decision and may also request further written submissions from the parties.

A question before the panel must be decided by a majority vote of the members of the panel and, if the votes are equal, the chairperson of the panel has a casting vote (s.188).

3.9.1 Decision about whether a ground for disciplinary action is established

After considering all of the evidence, and as soon as practicable after completing the hearing of a disciplinary matter, the panel must decide whether a ground for disciplinary action against the practitioner is established (s.200).

Among other things, if the panel is making a decision about whether the practitioner has behaved in a way that constitutes unsatisfactory professional conduct, the panel –

- must have regard to any relevant codes of practice
- must have regard to any relevant previous decisions by a disciplinary body (including a board before the commencement of the Act) or the Medical Assessment Tribunal (MAT) of which the panel is aware
- may have regard to any relevant previous decisions by a foreign disciplinary body (s.200)

3.9.2 Decision where ground for disciplinary action is established

Where the panel has decided that a ground for disciplinary action is established against a practitioner who is registered at the time of the decision, it must decide to impose one or more of the disciplinary actions set out at s.201(2) (see below).

Under s.203(2), where the panel has decided that a ground for disciplinary action is established against a practitioner who was registered, but is not registered at the time of the decision, it must either decide to take no further action, or either or both of the actions set out at s.203(2)(b) (see below).

In making its decisions about appropriate disciplinary action for registered practitioners and practitioners formerly registered, the panel –

- must have regard to the purposes of disciplinary action (s.123)
- must have regard to any relevant previous decisions about the practitioner by a disciplinary body or the MAT of which the panel is aware
- may have regard to any previous decisions about the practitioner by a foreign disciplinary body (s.204)

Other considerations may include –

- the seriousness of the conduct
- the likelihood the conduct will recur
- the practitioner's attitude toward the conduct (including any remorse demonstrated)

Where the practitioner is registered

If a panel decides that a ground for disciplinary action is established against a practitioner who is registered at the time of the decision, the panel must decide to do one or more of the following –

- advise, caution or reprimand the practitioner
- impose conditions on the practitioner including –
 - requiring the practitioner not to carry out a type of practice or procedure
 - requiring the practitioner not to provide services to a class of persons
 - requiring the practitioner to carry out the practitioner's practice under supervision
 - requiring the practitioner to undertake an educational course, or a continuing professional education activity, within a stated reasonable time, and report to the practitioner's board after completing the course or activity
 - requiring the practitioner to report about particular aspects of the practitioner's practice to the practitioner's board or a stated person
 - requiring the practitioner to report to the practitioner's board, within a stated reasonable time and in a stated reasonable way, about the practitioners' compliance with conditions imposed by the panel
- approve an undertaking entered into, with the practitioner's agreement, between the practitioner and the practitioner's board about the practitioner's professional conduct or practice (s.201(2))

If the panel decides to impose conditions on the practitioner's registration, it must state a period, not more than 3 years from the day the decision takes effect, within which the practitioner may not apply for a review of the conditions (under part 9, division 2 of the Act) (s.201(3)).

Where the practitioner is not registered

If the panel decides a ground for disciplinary action is established against a person who was registered, but is not registered for the relevant profession at the time of the panel's decision, the panel must decide either –

- to take no further action relating to the matter, or
- either or both of the following-
 - that a form of disciplinary action which the panel could impose would have been taken if the person were still registered
 - the conditions that must be imposed on any future registration of the person (s.203)

3.9.3 Decision about Board's Register

Where the panel decides that a ground for disciplinary action is established against a practitioner who is registered at the time of the decision, it must also decide –

- where the disciplinary action is to advise, caution or reprimand - whether it must be recorded in the board's register, and for how long it must be recorded
- where the disciplinary action is to impose conditions or approve an undertaking – whether details of the conditions or undertaking must be recorded in the board's register for the period for which they are in force. (The fact that conditions have been imposed or an undertaking entered into must appear in the register.) The panel must decide that details of the conditions or undertaking are to be recorded in the board's register unless it reasonably believes it is not in the interests of users of the practitioner's services or the public to know the details (s.202)

3.10 Written Decision

Within two weeks after a decision has been made, the panel will provide a written statement of the decision to the secretary.

The statement of the decision must state the following –

- the panel's decision
- whether a ground for disciplinary action against the practitioner is established
- the disciplinary action, if any, that the panel has decided to take
- the reasons for the decision, including the reasons for any proposed disciplinary action
- the panel's decisions on material questions of fact
- the evidence or other material on which the panel's decisions about material questions of fact were based

If a ground for disciplinary action against the practitioner is established, the statement must also state –

- for a decision to advise, caution or reprimand the practitioner – whether the disciplinary action must be recorded in the board's register and if so the period for which it must be recorded
- for a decision to impose conditions on the practitioner's registration or approve an undertaking entered into between the practitioner and the board -
 - the fact that conditions have been imposed, or an undertaking entered into, must be recorded in the board's register for the period for which the conditions or undertaking are in force
 - whether details of the condition or undertaking must be recorded, and if so, what details must be recorded
 - if details of the condition or undertaking must not be recorded, why not
- for a decision to impose conditions on the practitioner's registration – the period after which the practitioner may apply for a review of the conditions

A draft decision written by the chairperson will be circulated to all members of the panel for comment and approval. On approval, the chairperson and members of the panel will sign and date the decision. The chairperson will then give the written statement of the decision to the secretary.

3.11 Secretary to Give Written Notice

As soon as practicable after the panel gives the secretary its decision, the secretary must give written notice of the decision to –

- the parties
- any complainant
- the Commissioner

The notice must state the following –

- the panel's decision
- whether a ground for disciplinary action against the practitioner is established
- the disciplinary action if any that the panel has decided to take
- the reasons for the decision, including the reasons for any proposed disciplinary action
- the panel's decisions on material questions of fact
- the evidence or other material on which the panel's decisions about material questions of fact were based
- that a party may appeal against the decision to the tribunal
- how to appeal

If a ground for disciplinary action against the practitioner is established, the notice must also state –

- for a decision to advise, caution or reprimand – whether the disciplinary action must be recorded in the board's register and if so the period for which it must be recorded
- for a decision to impose conditions on the practitioner's registration or approve an undertaking entered into between the practitioner and the board -
 - the fact that conditions have been imposed, or an undertaking entered into, must be recorded in the board's register for the period for which the conditions or undertaking are in force
 - whether details of the condition or undertaking must be recorded, and if so, what details must be recorded
 - if details of the condition or undertaking must not be recorded, why not
- for a decision to impose conditions on the practitioner's registration – the period after which the practitioner may apply for a review of the conditions

4 POST HEARING

4.1 Review of the Decision

4.1.1 General

Conditions imposed on a practitioner's registration under s.201(2)(b) by a panel can be reviewed.

A notice of review filed by the practitioner with the secretary starts a review (s.317).

The secretary must within 14 days after the notice of review is filed give written notice to –

- the practitioner's board
- the commissioner

The secretary's notice must state that a notice of review of the conditions relating to the practitioner has been filed and be accompanied by a copy of the notice of review (s.318).

As soon as practicable after the notice of review is filed, the secretary must establish a panel to review the conditions (s.319).

The same provisions apply to the establishment of a review panel by the secretary as apply to the establishment of a panel.

The review panel must decide whether it will conduct the review by hearing or by written submissions. The review panel may decide to conduct the review by written submissions only if the panel believes it is appropriate and fair in the circumstances to do so (s.320).

The secretary must give the parties written notice about the review panel's intention to conduct a hearing for the review (s.321).

If the review panel decides to conduct the review on the basis of written submissions –

- the panel must decide a reasonable time within which it will accept written submissions
- the secretary must give the parties written notice that the review is to be conducted on the basis of written submissions

4.1.2 Decision on Review

In conducting the review, the review panel may have regard, among other things –

- to any evidence or other material considered by the original panel
- to any decisions, including the reasons for the decisions, made by the original panel (s.322)

After reviewing the conditions imposed by the original panel, the review panel must decide to –

- to confirm the conditions
- to remove the conditions
- to change the conditions; or
- to remove the conditions and replace them with another action which a panel may take under s.201(2) (s.324(1))

In making its decision under s.324(1) (review decision), the panel –

- must have regard to the purposes of disciplinary action (s.123)
- must have regard to any relevant previous decisions about the practitioner by a disciplinary body or the MAT of which the panel is aware
- may have regard to any previous decisions about the practitioner by a foreign disciplinary body (s.204)

If the review panel decides to impose conditions on the practitioner's registration, it must state a period, not more than 3 year from the day the decision takes effect, within which the practitioner may not apply for a review of the conditions (under part 9, division 2 of the Act) (s.324(3) & s.201).

4.1.3 Review Decision about Board's Register

In making the review decision the review panel must also decide –

- where the disciplinary action is to advise, caution or reprimand - whether it must be recorded in the board's register, and for how long it must be recorded
- where the disciplinary action is to impose conditions or approve an undertaking – whether details of the conditions or undertaking must be recorded in the board's register for the period for which they are in force. (The fact that conditions have been imposed or an undertaking entered into must appear in the register.) The review panel must decide that details of the conditions or undertaking are to be recorded in the board's register unless it reasonably believes it is not in the interests of users of the practitioner's services or the public to know the details (s.324(4) & s.202)

4.1.4 Written Decision and Decision Notice

Section 3.10 and section 3.11 of these guidelines apply to review panels making review decisions (see s.324(5) and s.205).

4.1.5 Review of Review Decision

The practitioner can have a review of the decision made under s.324 by a review panel by filing another notice of review with the secretary (s.315).

5 APPEALS TO TRIBUNAL

The following decisions of a panel are appealable decisions (s.325) –

- a decision about whether a ground for disciplinary action against a practitioner is established (under s.200(1))
- a decision to take disciplinary action against a practitioner (under s.201(2) or s.203(2)(b))
- a decision about the period within which a practitioner may not apply for a review of a decision (under s.201(3) or s.324(3))
- a decision to record that a practitioner has been given advice, a caution or reprimand and the period for which it is to be recorded or to record details of conditions or an undertaking (under s.202(1))
- a decision under s.324 to confirm, remove or change conditions or remove conditions and replace the conditions with another action a panel may take under s.201(2)

The following may appeal to the Health Practitioners Tribunal against an appealable decision –

- the practitioner to whom the appealable decision relates
- the practitioner's board, if the appealable decision was made by a panel (s.326)

A notice of appeal filed with the registrar starts an appeal (s.327).

The notice of appeal must be filed within 28 days after the day the appellant receives notice of the appealable decision.

An appeal is by way of re-hearing on the original evidence. However, the tribunal may give leave to adduce fresh, additional or substituted evidence if the tribunal is satisfied that –

- the party asking to adduce the new evidence did not know, or could not reasonably be expected to have known, of its existence at the time appealable decision was made
- in the special circumstances of the case it would be unfair not to allow the party to adduce the new evidence (s.331)

In deciding the appeal the tribunal may do those things set out at s.336(1).