



Australian Government
Professional Services Review

**YOUR GUIDE
IS AS EASY AS**

ONE

TWO

THREE

YOUR GUIDE TO THE PSR PROCESS



Your Guide to the PSR Process

A resource for practitioners
who are referred to
Professional Services Review

Professional Services Review

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Disclaimer

This reference guide is not a substitute for legal advice, and its intent is to assist practitioners understand the process as set out in the *Health Insurance Act 1973* and its application by the Professional Services Review. The process outlined in this document is correct as at June 2011, but is subject to change. The guidance provided within this document is presented in the interests of transparency and is not a substitute for considering the provisions of Part VAA of the *Health Insurance Act 1973* and obtaining your own independent legal advice.

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This resource guide is intended to provide you with a detailed explanation of each of the steps of the Professional Services Review process so that you know what to expect when you are reviewed by Professional Services Review.

INTRODUCTION BY THE DIRECTOR

It also informs you of your rights during the Professional Services Review process. Professional Services Review recognises that health care professionals are respected members of the community who seek to do the right thing and have a high level of integrity.

The Professional Services Review Scheme was introduced in 1994 to protect the integrity of the Medicare Program and Pharmaceutical Benefits Scheme by creating a peer review process to review the claiming and prescribing of a practitioner.

The process for conducting these reviews is set out in the *Health Insurance Act 1973*, which gives Professional Services Review the authority to investigate whether practitioners have engaged in inappropriate practice.

As a peer review process the Professional Services Review Scheme has been designed to ensure that appropriately qualified individuals will make decisions on whether you have made inappropriate claims against the MBS and the PBS.

The process has also been designed to give you a number of opportunities to present your case, and respond to the findings of your peers.

**PROFESSIONAL SERVICES REVIEW RECOGNISES THAT
HEALTH CARE PROFESSIONALS ARE RESPECTED
MEMBERS OF THE COMMUNITY WHO SEEK TO DO THE
RIGHT THING AND HAVE A HIGH LEVEL OF INTEGRITY.**

It is important to note that the Professional Services Review process can have significant outcomes. The professionals who sit on Committees and the Determining Authority take their responsibilities very seriously, and do not make decisions to find inappropriate practice or sanction their peers lightly.

**WE ARE COMMITTED TO ENSURING THAT YOU
HAVE APPROPRIATE AND RELEVANT INFORMATION
AVAILABLE TO HELP YOU UNDERSTAND THE PROCESS.**

Professional Services Review is mindful that the staged review process has the potential to be confusing and complex, and we are committed to ensuring that you have appropriate and relevant information available to help you understand the process.

This resource has been created to assist you understand the processes followed by Professional Services Review. It contains information about:

- the key decisions that will be made in relation to your matter throughout the various stages of the process
- your rights and responsibilities during each stage of the process
- when and how you will have opportunities to present your case.

This resource guide has been broken into four distinct sections comprising of an introduction to the PSR Scheme and procedural guidance on each of the three key stages that make up the Scheme.

The Professional Services Review process is not intended to be adversarial. The Director and the Committee will ask you to present your case clearly and respond to their questions and requests.

Your feedback on the process, and the information that is available to you during the process, would also be greatly appreciated. You can contact us on:

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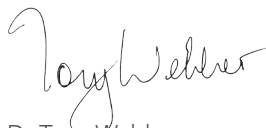
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Dr Tony Webber
Director Professional Services Review
June 2011

GLOSSARY AND ACRONYMS

the Act means the *Health Insurance Act 1973*

AMA means the Australian Medical Association

Case officer means the PSR staff member who will coordinate the administration of your case

Committee means a Professional Services Review Committee comprising at least three practitioners appointed under section 93 of the *Health Insurance Act 1973*. Sometimes referred to as PSRC. A further explanation of the PSRC can be found on page 44

Committee member means a member of a Committee, who must be a current Panel member

Department means the Department of Health and Ageing

Deputy Director means a Deputy Director of Professional Services Review appointed under section 85 of the *Health Insurance Act 1973* who serves as the chair of the Committee

Determining Authority means the independent statutory body established under the section 106Q of the *Health Insurance Act 1973*. A further explanation of the role of the Determining Authority can be found on page 58

Director means the Director of Professional Services review appointed under section 83 of the *Health Insurance Act 1973*. Sometimes referred to as DPSR

Director's Review means the process undertaken by the Director under Division 3A of Part VAA of the Act.

Draft Report means the preliminary findings of a Committee following a hearing as required by 106KD. A further explanation of the Draft Report can be found on page 51

Final Report means the final findings of a Committee following assessment of further submissions by a practitioner following the Draft Report as required by 106L. A further explanation of the Final report can be found on page 52

Draft Determination means the draft document containing what action is proposed to be taken in your case as required by 106T. A further explanation of the Draft Determination can be found on page 63

Final Determination means the final document containing what action will be taken in your case as required by 106TA. A further explanation of the Final Determination can be found on page 64

Inappropriate practice is defined under Section 82 of the *Health Insurance Act 1973* as conduct in connection with rendering or initiating services that a Committee of the practitioner's peers could reasonably conclude was unacceptable to the general body of their profession. A further explanation of inappropriate practice can be found on page 10

Medicare Services means services provided by a practitioner which generated a Medicare Benefit

Minister means the Minister for Health and Ageing

MBS means Medicare Benefits Schedule

Negotiated Agreement means a written Agreement made under section 92 of the *Health Insurance Act 1973*. A further explanation of Negotiated Agreements can be found on page 37 and 61

Panel means the Professional Services Review Panel established under subsection 84(1) of the *Health Insurance Act 1973* member of which are available for appointment to a Committee

Panel member means a practitioner appointed under subsection 84(2) of the *Health Insurance Act 1973*

PBS means Pharmaceutical Benefits Scheme

Practitioner means a:

- medical practitioner
- dental practitioner
- optometrist
- midwife
- nurse practitioner
- chiropractor
- physiotherapist
- podiatrist
- osteopath.

PSR means Professional Services Review

Ratify means to authorise or approve. This term is used when the Determining Authority is deciding if an Agreement with the Director will come into effect

Sanction is a penalty, and within the PSR Scheme means any of the directions specified in section 106U of the *Health Insurance Act 1973*. A further explanation of what sanctions can apply can be found on page 20

Professional Services Review (PSR) was established in July 1994 as an Agency within the Health Portfolio to protect the integrity of Medicare and the Pharmaceutical Benefits Scheme (PBS).

OVERVIEW OF THE PSR SCHEME

PSR is established under Part VAA of the *Health Insurance Act 1973* (the Act) which sets out the role and powers of the Agency, as well as the process that it must follow when conducting its work.

Through the performance of its statutory role, PSR protects patients and the community from the risks associated with inappropriate practice, and protects the Commonwealth from having to meet the cost of medical / health services provided as a result of inappropriate practice.

PSR examines suspected cases of inappropriate practice which have been referred by the CEO of Medicare Australia. PSR cannot initiate its own reviews of practitioners.

The PSR process is comprised of three main stages. You will not necessarily progress past the first stage. The first stage involves the consideration of whether you have a case to answer by the Director of PSR (Director). The second stage is a peer review process by a PSR Committee (Committee) to consider if inappropriate practice has occurred. The third and final stage involves the consideration and setting of an appropriate outcome by the Determining Authority.

PSR EXAMINES SUSPECTED CASES OF INAPPROPRIATE PRACTICE WHICH HAVE BEEN REFERRED BY THE CEO OF MEDICARE AUSTRALIA. PSR CANNOT START OR INITIATE ITS OWN REVIEWS OF PRACTITIONERS.

The Scheme is managed by the Director who is an independent statutory officer appointed by the Commonwealth Minister for Health and Ageing (the Minister). The Director's appointment is subject to the agreement of the Australian Medical Association (AMA). The Director must be an experienced Medical Practitioner. The Director of PSR employs case officers and other administrative support staff to coordinate the matters that are referred to PSR. Case officers will oversee the administration of the process through all three stages and ensure that the correct processes are followed. Case officers are not decision makers and cannot influence the outcome of your matter.

To create a Committee of peers the Director selects from the Professional Services Review Panel. This Panel consists of practitioners who are appointed by the Minister after consultation with the AMA (in the case of medical practitioners) or other appropriate professional organisations. At any one time there can be over 100 members of the Panel, across a range of medical specialties. If your matter requires a Committee to be formed the Director will select two Panel members, and one Deputy-Director to form your Committee.

The Minister appoints Deputy Directors, who chair Committees.

The Determining Authority comprises a medical practitioner as Chair, a layperson who represents the community's interests and a member of the same profession as the practitioner under review. The Determining Authority is appointed by the Minister after consultation with the appropriate professions.



The overall role of the PSR process is to decide if inappropriate practice has occurred and what sanctions should be applied as a result. It is important to note that PSR is only able to review services that have attracted a Medicare or PBS benefit.

DEFINITION OF INAPPROPRIATE PRACTICE

INAPPROPRIATE PRACTICE IS CONDUCT IN CONNECTION WITH RENDERING OR INITIATING SERVICES THAT A COMMITTEE OF THE PRACTITIONER'S PEERS COULD REASONABLY CONCLUDE WAS UNACCEPTABLE TO THE GENERAL BODY OF THEIR PROFESSION.¹

The key elements of this definition are:

- whether your practice/conduct when providing or initiating Medicare services would be unacceptable to a body of your peers
- whether your conduct in prescribing or dispensing PBS medicines would be unacceptable to a body of your peers.

IT IS IMPORTANT TO NOTE THAT PSR IS ONLY ABLE TO REVIEW SERVICES THAT HAVE ATTRACTED A MEDICARE OR PBS BENEFIT.

In determining whether inappropriate practice did occur there are three other considerations that are taken into account. These are:

- whether or not you kept adequate and contemporaneous records for Medicare or PBS services you have rendered or initiated. The *Health Insurance (Professional Services Review) Regulations 1999* defines adequate and contemporaneous as:
 - the record clearly identifies the name of the patient
 - the record contains a separate entry for each attendance by the patient for a service and the date on which the service was rendered or initiated

¹ For the full definition of inappropriate practice refer to section 82 of the *Health Insurance Act 1973*

- each entry provides clinical information adequate to explain the type of service rendered or initiated
- each entry is sufficiently comprehensible that another practitioner, relying on the record, can effectively undertake the patient’s ongoing care
- the record must be completed at the time the practitioner rendered or initiated the service or as soon as practicable after the service was rendered or initiated by the practitioner
- whether you performed a ‘prescribed pattern’ of services.² Defined in legislation, it means that a general practitioner who performs 80 or more professional services on 20 or more days during a 12 month period has engaged in inappropriate practice
- whether the service you provided met the requirements of the MBS or PBS item descriptor.

Inappropriate practice does not include:

- fraudulent or criminal behaviour – which is managed by Medicare Australia and State and Federal Police
- failure by a practitioner to comply with professional standards or conduct that poses a significant threat to life or health – which is managed by the Australian Health Practitioner Regulation Agency, State and Territory Health Registration Boards and other complaint bodies.

² Part 3 of the *Health Insurance (Professional Services Review) Regulations 1999*

A referral to the PSR is an outcome of Medicare Australia's Practitioner Review Program and Medicare Australia will notify you if and when you have been referred to PSR.

WHAT SHOULD YOU DO NOW THAT YOU HAVE BEEN REFERRED TO PSR?

The PSR process is a peer review scheme which involves examination of services you have provided and for which your patients received a Medicare or PBS benefit. This includes an assessment of your provision of services according to the legal requirements in the MBS and the PBS, whether there was clinical justification for the service as evidenced by your clinical record for the service. PSR will also assess the adequacy of your clinical records. As such the PSR process can be time-consuming and legally complex. Some people will find this stressful. PSR is committed to assisting you to ensure that the impacts of the process are minimised as far as is reasonable and possible.

At the start of the process there are four key steps that you should take.

1. We strongly advise you to engage your medical defence organisation or a legal adviser as early as possible to assist you through the process. The PSR Scheme is a legal process that can have some significant impacts on your future (including the option of disqualifying you from providing Medicare or PBS services for up to 3 years). Legal assistance will therefore assist you in protecting your interests. Most medical defence organisations are familiar with the administrative and legal requirements of the PSR process and will be able to provide you with valuable advice and guidance.
2. We also suggest that you inform people close to you that you have been referred to PSR. Whilst this will be entirely at your discretion, having someone to discuss the matter with will help you manage any potential stress or concerns that may arise during the process.

PSR IS COMMITTED TO ASSISTING YOU TO ENSURE THAT THE IMPACTS OF THE PROCESS ARE MINIMISED AS FAR AS IS REASONABLE AND POSSIBLE.

3. The Request to Review document, which has been sent to you by Medicare Australia, will contain information outlining Medicare Australia's concerns, as well as statistics about your practice during the review period. This document contains the reason why you have been referred to PSR. To understand the case you have to answer during the PSR process we suggest you familiarise yourself with the contents of this document.
4. As part of his or her Review of your practice, the Director of PSR will send you a Notice requesting the complete and original clinical records of some of your patients who received a service during the review period. It is important that you meet the due dates specified in this Notice (you will be provided with at least 14 days to respond from the date you receive the notice). PSR will provide you with a reasonable amount of time to provide the clinical records and will also provide you with a plastic storage crate with tamper resistant seals for their secure courier transport to and from your practice.

What to do checklist:

- ✓ *Talk to your medical defence organisation or legal adviser*
- ✓ *Identify and inform your support person or group*
- ✓ *Read and familiarise yourself with the Request to Review document sent by Medicare Australia to the Director of PSR*
- ✓ *Prepare to respond to the Notice requesting complete and original clinical records by the due date*
- ✓ *Read this resource guide to assist you in your understanding of, and obligations under, the PSR process*

SUMMARY - THE THREE STAGES OF REVIEW

SUMMARY OF STAGE 1 - Review by the Director

Decision on whether the matter should be reviewed

The PSR process begins when Medicare Australia requests the Director to undertake a review of the provision of services by a practitioner over a specified period.

The Director must undertake a review if, after considering the Medicare Australia request, the Director forms the opinion that the person may have engaged in inappropriate practice.

The Director undertakes a review of the data received from Medicare Australia and may also direct the practitioner to produce complete and original patient records. The records are examined, the Director may meet with the practitioner, a report on the findings is made and any submission received from the practitioner is considered. After this, the Director must decide to:

1. take no further action
2. offer the practitioner the opportunity to negotiate an Agreement under section 92 of the Act

or

3. refer the practitioner to a peer review Committee.

A fuller description of this stage of the process is set out from page 30 of this resource.

SUMMARY OF STAGE 2 - Review by a Committee

Decision on whether inappropriate practice occurred

If the Director considers that the conduct of the practitioner needs further investigation, or the practitioner chooses not to enter a section 92 Agreement, a Committee of the practitioner's peers is established. Members are drawn from the Panel appointed by the Minister.

The Committee will consider whether the clinical decisions were inappropriate for the patient, whether the services provided did not meet the requirements of the Medicare item descriptor and / or any PBS restrictions as well as assessing the adequacy of clinical records. The Committee will use clinical records and any other material provided by the practitioner. The Committee determines whether the practitioner's conduct in connection with the rendering or initiation of services would be acceptable to the general body of their peers.

If, after considering the information provided, the Committee forms a preliminary view that the practitioner may have engaged in inappropriate practice, a hearing will be held. The hearing will provide the practitioner with the opportunity to present both oral and written evidence to support their case. After considering all the evidence, the Committee produces a Draft Report containing its findings. The practitioner is given a copy of this Report.

If the Committee finds that no inappropriate practice has occurred, the matter is closed. If the Committee finds that inappropriate practice has occurred, the practitioner will be given time to make submissions on the Draft Report. The Committee will then consider the practitioner's submissions and may or may not change their findings. The Committee will then issue a Final Report to the practitioner, and the Determining Authority.

A fuller description of the Committee stage of the process is set out from page 41 of this resource.

SUMMARY OF STAGE 3 - Determining Authority

Decision on a suitable sanction

The Determining Authority is an independent body within the Professional Services Review Scheme. The Determining Authority has two main functions, which are to:

- decide whether to ratify section 92 Negotiated Agreements reached between the Director of PSR and a practitioner

and

- determine what sanctions to apply whenever practitioners have been found to have engaged in inappropriate practice by a Committee.

When a Committee makes a finding of inappropriate practice against a practitioner, the Determining Authority will invite submissions from the practitioner on the sanctions it should impose. The Determining Authority will then draft a determination, including the sanctions it intends to impose.

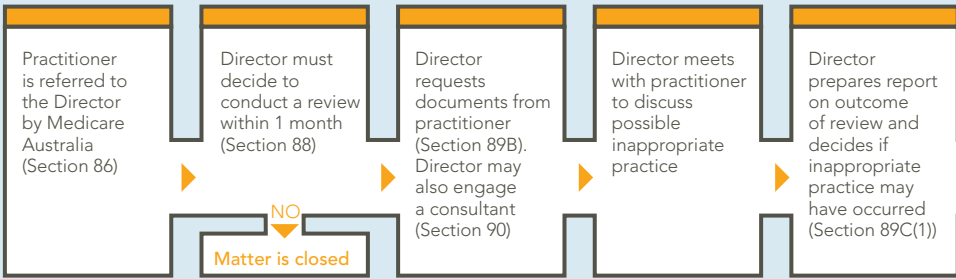
The Determining Authority must impose one or more of the following sanctions:

- a reprimand
- counselling
- partial disqualification from claiming a Medicare benefit for no more than 3 years
- full disqualification from claiming a Medicare benefit for no more than 3 years
- an order for repayment of any Medicare benefits for services provided in the review period which have been found as being provided inappropriately
- a full disqualification from the PBS for no more than 3 years.

Practitioners are given an opportunity to make written submissions on the Draft Determination. The Determining Authority will consider this submission and then make a Final Determination. This Final Determination contains the final decision of PSR and is the end of the PSR process unless the practitioner appeals to the Federal Court or Federal Magistrates Court.

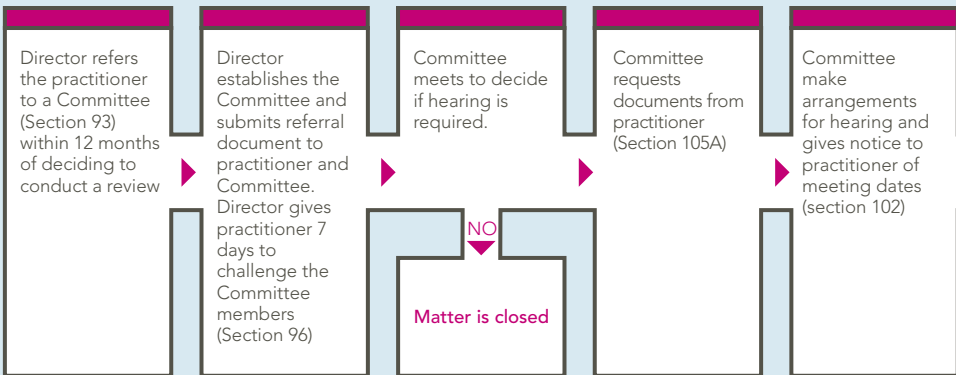
A fuller description of the Determining Authority stage of the process is set out from page 55 of this resource.

STAGE 1: Review by Director



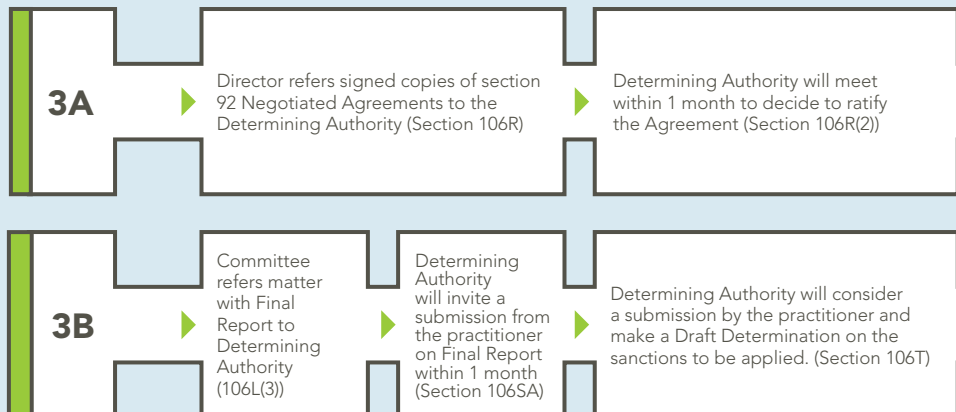
See page 31 for a more detailed explanation of Stage 1: Review by Director

STAGE 2: Review by a Committee

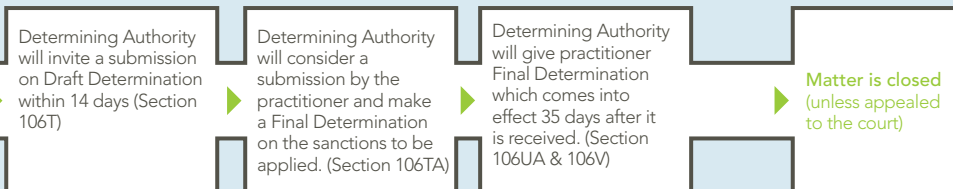
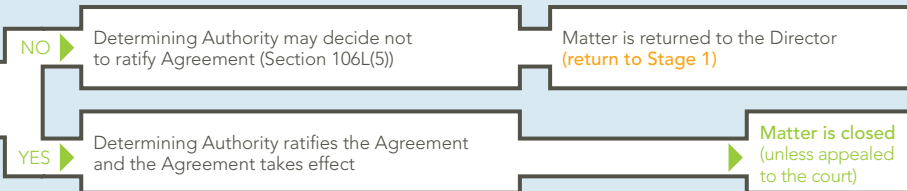
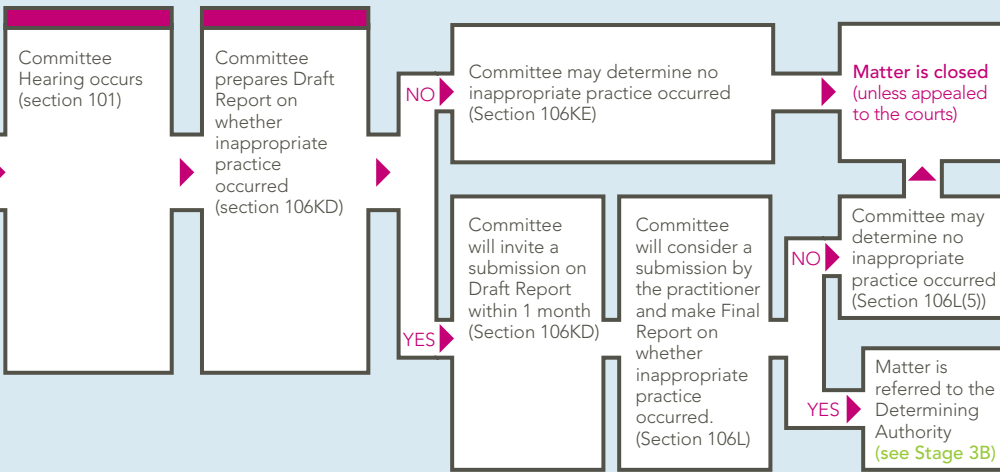
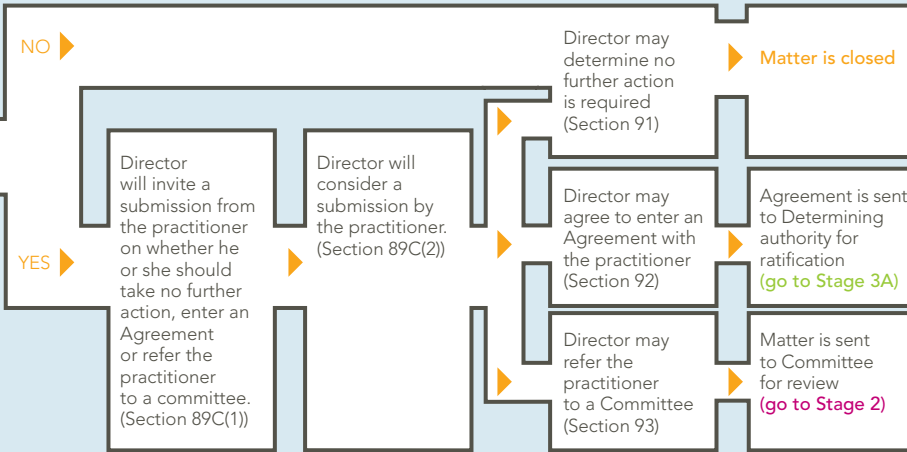


See page 41 for a more detailed explanation of Stage 2: Review by a Committee

STAGE 3: Determining Authority



See page 55 for a more detailed explanation of Stage 3: Determining Authority



PSR only reviews matters referred to it from Medicare Australia. In accordance with section 86 of the Act, the CEO of Medicare Australia can request the Director of PSR to review a practitioner's provision of services and their use of the MBS and PBS.

HOW DID YOU COME TO PSR?

Medicare Australia analyses MBS and PBS claiming statistics to identify any potential concerns that may exist with a practitioner's use of MBS or the PBS through their Practitioner Review Program. When Medicare Australia considers that these concerns may relate to inappropriate practice and forms the view that assessment of these concerns requires a review of your clinical records, they will refer the matter to the Director of PSR.

Medicare Australia will have sent to you a copy of the Request to Review that it sent to the Director. Within this letter Medicare Australia outlined the concerns that it had identified with your MBS or PBS claims. It is these concerns that the Director will now review.

The PSR decision making process is a peer review of your use of the MBS or PBS and whether or not your conduct in providing or initiating services that attracted an MBS or PBS benefit would be unacceptable to the general body of your peers. PSR is not primarily about your competence as a practitioner, but rather the appropriate use of Medicare and the PBS. The extent to which your clinical notes of the service demonstrate the service was clinically appropriate for the treatment of the patient and met the professional standards expected by your peers will underpin the Director's and /or the Committee's decision. PSR does not make any judgements of inappropriate practice based on the statistical profile of a practitioner alone.

**THE PSR
DECISION
MAKING
PROCESS IS A
PEER REVIEW
OF YOUR USE
OF THE MBS
OR PBS.**

Medicare Australia's concerns relate to a period of time over which you provided Medicare and / or PBS services (which must be within the previous two year period). This is referred to as the review period.

WHAT WILL PSR LOOK AT?

PSR will examine your clinical records of the services you provided during the review period set by Medicare Australia and will determine whether or not you have engaged in inappropriate practice. PSR does not have to confine itself to the services highlighted by Medicare Australia. Matters the PSR will take into consideration in determining whether you have engaged in inappropriate practice can include:

- whether your conduct when providing or initiating Medicare services would be unacceptable to the general body of your peers, including that you have
 - not demonstrated the clinical relevance of the service
 - not demonstrated that the service provided was clinically adequate
- failing to keep adequate and contemporaneous records. This can mean a number of things including that your records
 - are illegible
 - have inadequate detail to explain the condition and / or treatment
 - do not demonstrate the clinical relevance of the service (i.e. that the service provided was clinically necessary or justified)
 - whether your practice/conduct when prescribing or dispensing PBS medicines would be unacceptable to a body of your peers
 - whether you have performed 80 or more professional services on 20 or more days during a 12 month period without a special circumstance (for general practitioners or other medical practitioners rendering professional attendances)³
- do not demonstrate that the requirements of the MBS or PBS were fulfilled.

During the PSR process, the Director of PSR and a PSR Committee may consider the following documents or information as part of their review of your practice:

- the information within Medicare Australia's Request to Review
- further statistical, claims related, information requested from Medicare Australia
- clinical records and other documents requested from you
- additional submissions you have provided to support your case
- clinical records and other documents from other practice locations at which you practised during the review period
- information provided by a consultant or learned professional body that the Director has contacted, in accordance with the Act⁴, to obtain assistance in making his or her decision
- documents or verbal evidence presented/given by yourself, your representatives or other witnesses throughout the PSR process.

³ Health Insurance (Professional Services Review) Regulations 1999.

⁴ Section 90 of the *Health Insurance Act 1973*

There are six outcomes from the PSR process which can be reached at various stages of a matter.

WHAT ARE THE POSSIBLE OUTCOMES OF THE PSR PROCESS?

The six outcomes are:

1. **No further action** – a finding that you have not practiced inappropriately. Your matter is closed
2. **Reprimand** – a written or verbal reprimand given to you by the Director
3. **Counselling** – a verbal exchange of information given to you by the Director about why you were found to have practiced inappropriately and what action you should take to avoid it occurring again
4. **Repayment order** – an order for you to repay Medicare benefits that you received or caused to be paid
5. **Partial / full disqualification from Medicare** – a disqualification of up to 3 years from some or all MBS items. This means the services you provide to your patients will not attract a Medicare benefit
6. **Disqualification from the PBS** – is a disqualification of up to 3 years from prescribing or dispensing PBS items to your patients.

A decision that **no further action** be taken can be reached at three stages of the process. These are when:

- the Director decides not to undertake a Review of your practice
- the Director undertakes a review and decides that there is no evidence to indicate a Committee could find that you had engaged in inappropriate practice
- a Committee undertakes a review of your practice and finds that you did not practise inappropriately during the review period.

One or more of the **sanctions** maybe imposed at two stages of the process. These are when:

- the Determining Authority ratifies an Agreement you have entered with the Director under section 92 of the Act, which contains one or more sanctions
- the Determining Authority considers a Committee Final Report and makes a Final Determination containing the decision on the appropriate sanctions to apply.

Publishing Committee Outcomes

If your matter is referred to a Committee and a finding of inappropriate practice is made the Director can publish your name, address, profession / speciality, the nature of your conduct and the sanctions the Determining Authority applied.⁵ The option to publish information becomes available to the Director only after a Final Determination has come into effect. The Director cannot publish your details, or the details of Agreements entered into under section 92 of the Act.

⁵ Section 106ZPR of the *Health Insurance Act 1973*

During the PSR process you will have a number of opportunities to explain your circumstances during the review period. You should be mindful of the decision that is being made in each stage of the process when making submissions and presenting your case. It is important to know when final decisions on issues have been, or are being, made.

WHAT OPPORTUNITIES WILL YOU HAVE TO EXPLAIN YOUR SITUATION AND PUT YOUR CASE?

Stage one: Decision by Director on whether inappropriate practice MAY have occurred (including whether to enter a Negotiated Agreement, take no further action, or refer to a Committee).

You will have the opportunity to provide:

1. verbal submissions and provide explanations during the meeting with the Director
2. written submissions addressing the findings made by the Director in the Draft Report presented after the meeting. You should also make written submissions at this time on what process should be used to resolve your case
3. verbal and written submissions during the negotiation of an Agreement under Section 92 of the Act (should that option be applied).

Stage two: Decision by Committee on whether inappropriate practice occurred.

You will have the opportunity to provide:

1. written evidence and explanations ahead of the Committee hearing

2. verbal and written evidence to the Committee at the hearing. At these hearings the Committee will question you on general aspects of your practice during the review period as well as the details of specific services you rendered or initiated during the review period. This may include your own testimony, evidence of witnesses or colleagues and other relevant evidence such as the availability of practitioners in your region
3. a written submission on the Committee's Draft Report containing its preliminary findings on the review of your practice.

Stage three: Decision by Determining Authority on the suitable outcome.

You will have the opportunity to provide:

1. a written submission about the sanctions the Determining Authority should apply as a result of the Committee's Final Report. A fuller description of a submission to the Determining Authority is set out from page 55 of this resource
2. a written submission in response to the Draft Determination prepared by the Determining Authority, which will contain its preliminary view on suitable sanctions for your matter.

A PSR matter can be lengthy due to the investigative and procedural nature of the process.

HOW LONG DOES A PSR MATTER TAKE, AND WHAT IMPACTS WILL EACH STAGE OF THE PROCESS HAVE ON YOU AND YOUR BUSINESS?

Indicative timeframes for finalisation of the different pathways that can occur are:

1. If the Director undertakes a review and decides to take no further action – **5 months from Medicare Australia's letter to the Director referring your matter to the PSR.**
2. If the Director undertakes a review and decides to enter into a Negotiated Agreement with you that is then ratified by the Determining Authority – **8 months from Medicare Australia's letter to the Director referring your matter to the PSR.**
3. If the Director undertakes a review and refers your matter to a Committee, which then conducts a review and refers its finding to the Determining Authority which makes a Final Determination – **2.5 years from Medicare Australia's letter to the Director referring your matter to the PSR.**

During the PSR process there will be times when you will need to be away from your practice. Occasions when this may occur include meetings with your medical defence organisation and / or lawyer and the meeting with the Director of PSR. If the matter is referred to a PSR Committee you will also be required to attend hearing days. A Committee hearing will normally occur across 4 to 6 full days (usually held in 2 day sessions, with an interval of 2 weeks between each 2 day session). You will receive sufficient notice of these dates ahead of time. The legislated requirement for notification of a Committee hearing is 14 days.

DURING THE PSR PROCESS THERE WILL BE TIMES WHEN YOU WILL NEED TO BE AWAY FROM YOUR PRACTICE.

PSR WILL PROVIDE YOU WITH A REASONABLE AMOUNT OF TIME TO PROVIDE THE CLINICAL RECORDS AND WILL PROVIDE YOU WITH A LOCKABLE PLASTIC TUB FOR SECURE COURIER TRANSPORT OF DOCUMENTS TO AND FROM YOUR PRACTICE.

You will also be required to produce documents to the Director and the Committee as a part of the process. Under Section 89B or 105A of the Act both the Director and the Committee have the power to require that you supply them with clinical records for services you have provided during the review period. You will be provided with a written notice that sets out the documents that are required to be supplied. The Director and the Committee can only request documents created during the review period.

PSR will provide you with a reasonable amount of time to provide the clinical records and will provide you with lockable plastic tubs for secure courier transport of documents to and from your practice. When they arrive at PSR, case officers will arrange for your records to be electronically scanned, and returned to you at the first available opportunity. This ensures the impact to your practice is minimised. You may wish to copy the records prior to sending to allow the continued treatment of you patients whilst the original records are with PSR.

The Director generally asks for 100-150 patient files for the review period, and the Committee generally asks for 120 patient files for the review period (however there is no statutory limit on the number of records that can be requested). This is an important part of the process, and it could take some time for you, or your authorised representatives, to gather the requested documents. It is also important for you to be aware that you may be disqualified from Medicare for intentionally failing to comply with a request for documents.

There is a possibility that the completion of the PSR process could result in an impact on your ability to practice (if a disqualification period is imposed) or your financial situation (if an order for a financial repayment is made).

PSR staff are bound by the Australian Government's Information Privacy Principles which are set out in the *Privacy Act 1988* and are designed to protect you and your patient's privacy.

WHO ELSE WILL KNOW, OR NEEDS TO KNOW THAT YOU HAVE BEEN REFERRED TO PSR?

PSR ABIDES BY STRICT PRIVACY RULES. THE ACT SPECIFICALLY PREVENTS ANY PSR STAFF MEMBER OR OTHER PERSON FROM DISCLOSING COMMITTEE DELIBERATIONS CARRYING A PENALTY OF 12 MONTHS IMPRISONMENT.⁶

The Act contains further protections on the information PSR collects and holds on your matter. All PSR staff are bound by the *Crimes Act 1914* and the *Public Service Act 1999* which contain offences for any staff member who discloses confidential information or documents gained in the course of their duties without authority.

Your matter will be given a unique number to ensure that people working on your matter can discuss the matter without needing to refer to your name or other details. It is one of the measures we use to ensure your privacy is protected.

PSR also ensures that it operates within a secure environment, inaccessible to members of the public. All documents relating to your matter are marked as confidential and locked in secure cabinets and protected IT systems in accordance with privacy and security requirements.

Throughout the process, PSR will contact you via mail on the address provided by Medicare Australia (usually your primary practice location). All mail from PSR will be marked as 'Private and confidential' and 'To be opened by addressee only'. Should you engage a medical defence organisation to represent you, PSR can, by written instruction, send correspondence to their address rather than yours.

People who will know you have been referred to the PSR, if your matter goes through the full process will be:

- the Medicare Australia staff who made the referral to PSR
- the Director of PSR
- any consultant or Panel member who was asked to assist in the review stage
- designated PSR staff members who will coordinate, and perform administrative work directly on your case
- PSR legal advisers
- the Deputy-Director and two Committee members who were appointed to your Committee

⁶ Section 106ZR of the *Health Insurance Act 1973*

- the members of the Determining Authority
- the Medicare Australia staff who are required to action any outcomes for your matter (i.e. repayment orders or disqualification periods)
- if a finding of inappropriate practice is made by a Committee the Director can publish your name and the details of your case

You are entitled to inform any other person or persons at your own discretion.

We advise you to engage a medical defence organisation and / or lawyer to assist you through the PSR process. In addition, we suggest you inform other key people in your practice about the matter as this will assist you in preparing for the process, and reduce any stress that may be associated with keeping the matter secret. This may include informing your practice manager and / or practice partners as these people may be able to assist you with administrative requirements such as retrieving original clinical records and preparing written submissions. You may also wish to inform family and friends for emotional support during the process.

**AT NO POINT ARE YOUR PATIENTS CONTACTED
OR INFORMED ABOUT THE PSR PROCESS BY PSR**

At any time during the PSR process, a referral to a regulatory body could be made.⁷

OTHER IMPORTANT THINGS YOU NEED TO KNOW

If clinical information revealed during the review causes the Director or Committee to form a concern regarding non-compliance with professional standards or identify any significant threat to a patient's life or health, PSR can refer the matter to your:

- Medical board

or to your

- Professional registration body.⁸

Should information revealed during the review cause the Director or Committee to consider that there may have been fraud or non-compliance with Medicare or the PBS, PSR can refer the matter to the Medicare Australia CEO.

If you have had two or more previous Final Determinations from PSR, you will be referred to the Medicare Participation Review Committee who can impose further sanctions. The Director must advise the Chairperson of the Medicare Participation Review Committee within 28 days of the effective date of the latest Final Determination.

There are a number of sanctions which can be enforced for obstructing the process or failure to provide evidence.⁹ The most significant of these are:

- disqualification from Medicare
- fines and / or imprisonment for up to 12 months.

⁷ Sections 89A, 106M, 106N, 106XA, 106XB & 106UAA of the *Health Insurance Act 1973*

⁸ Part 4 *Health Insurance (Professional Services Review) Regulations 1999* Schedule 1 & 2

⁹ Sections 106D, 106E, 106EA, 106ZPO & 106ZPP of the *Health Insurance Act 1973*

All staff at PSR are bound by the Australian Public Service Values and Code of Conduct. Through the application of these policies PSR seeks to ensure it operates with a high standard of professionalism, integrity and ethics.

WHAT CAN YOU EXPECT FROM PSR?

PSR staff will keep you informed throughout the process of how the matter is progressing and will make every attempt to limit the impact of the process on your practice.

PSR will provide you with reasonable time to respond to requests for documents, make submissions and to prepare for meetings and hearings.

The Director and a PSR Committee will conduct their review of your practice in accordance with the principles of transparency, natural justice and procedural fairness.

In their Reports to you the Director and a PSR Committee will explain the reason a decision about your practice has been made and you will be provided the opportunity to make written submissions to address any issues that are raised. You will also have the opportunity to object to the people who the Director selects to form your Committee of peers. A further explanation can be found on page 45.

If your matter is referred to a Committee all hearings will be held in private and you will be treated professionally and fairly by your peers on the Committee. A further explanation of your rights and obligations during the Committee hearing can be found on page 50.

WHAT YOU CAN EXPECT FROM PSR:

PSR expects that its staff and officers will comply with the legislation governing the PSR process and:

- ✓ *keep you fully informed of the progress and status of your matter and promptly acknowledge all interactions you have with PSR*
- ✓ *provide you with a dedicated case officer to assist in clarifying any issues or concerns you have, and ensure you have access to information to assist your understanding of the process*
- ✓ *make all reasonable attempts to limit the impact of the process on you*
- ✓ *give you clear reasons detailing why decisions have been made*
- ✓ *in accordance with the legislated process, give you the opportunity to respond to findings that are made and give each response you make fair consideration*
- ✓ *Set out the evidence that has been taken into account when reaching decisions and the reasons why particular evidence was rejected or given less weight*
- ✓ *uphold the confidentiality and privacy of you and your matter*

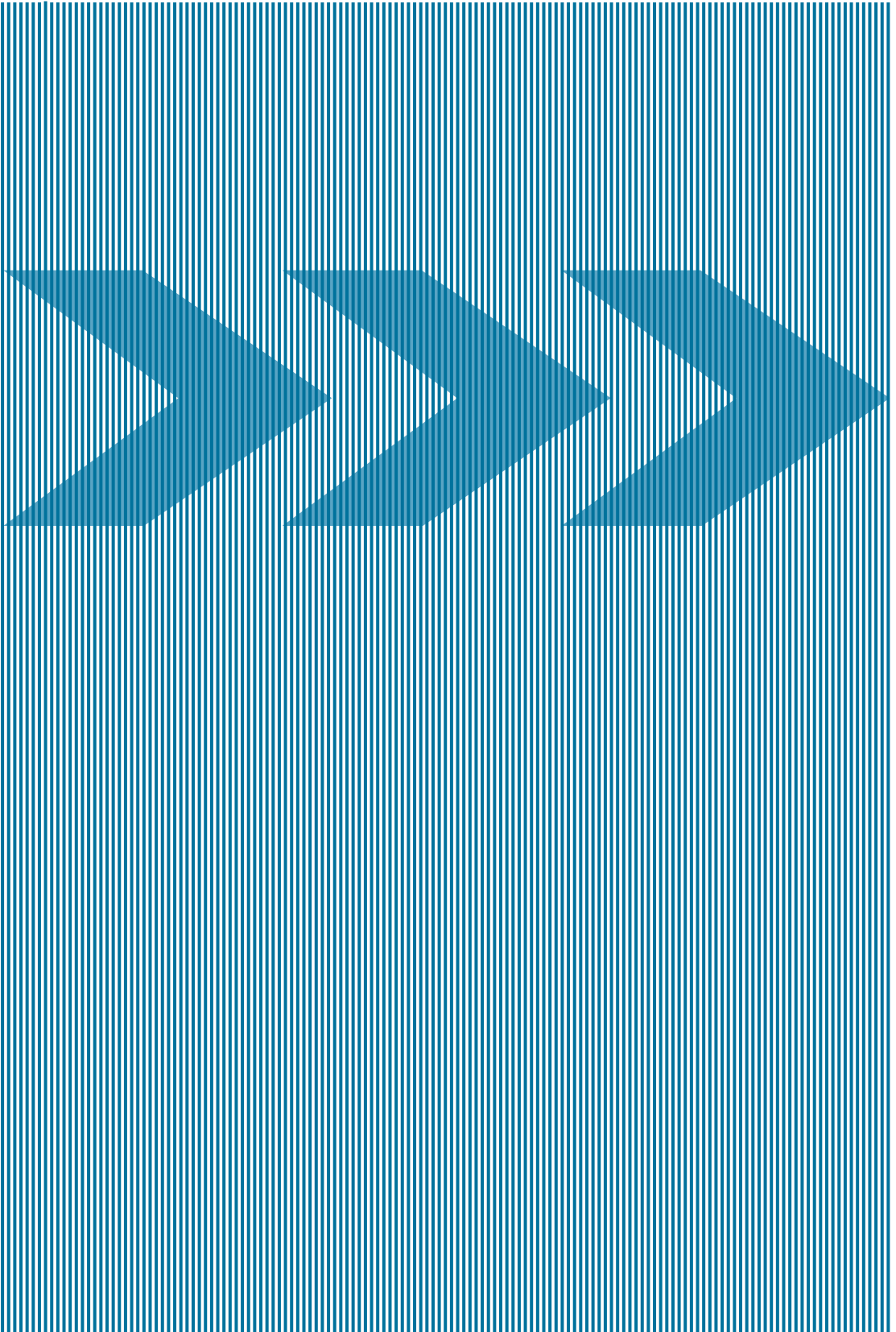
At any stage during the PSR process you may seek judicial intervention or review in the Federal Court or Federal Magistrates Court, in accordance with the *Administrative Decisions (Judicial Review) Act 1977*. If you choose to seek such intervention your medical defence organisation or lawyer can assist you with this process.

WHAT ACTION CAN YOU TAKE IF PSR DOES NOT MEET THESE EXPECTATIONS?

Other relevant bodies you may wish to contact should PSR not meet these expectations are the:

- AMA or other industry representatives
- Minister for Health and Ageing, who holds overall policy responsibility for the PSR Scheme and the appointment of the Director and Panel members
- Commonwealth Ombudsman, whose role is to ensure all administrative action by Australian Government agencies is fair and accountable
- Office of the Australian Information Commissioner, whose role is to manage the operation of the *Freedom of Information Act 1982* and the *Privacy Act 1988*.

You may also wish to inform your professional organisation, such as the AMA or other industry representative, of your experience of the PSR process.




STAGE 1:

Step 1.1 – Decision to
conduct a review 34

Step 1.2 – Decision whether
inappropriate practice may
have occurred – the section
89C report 35

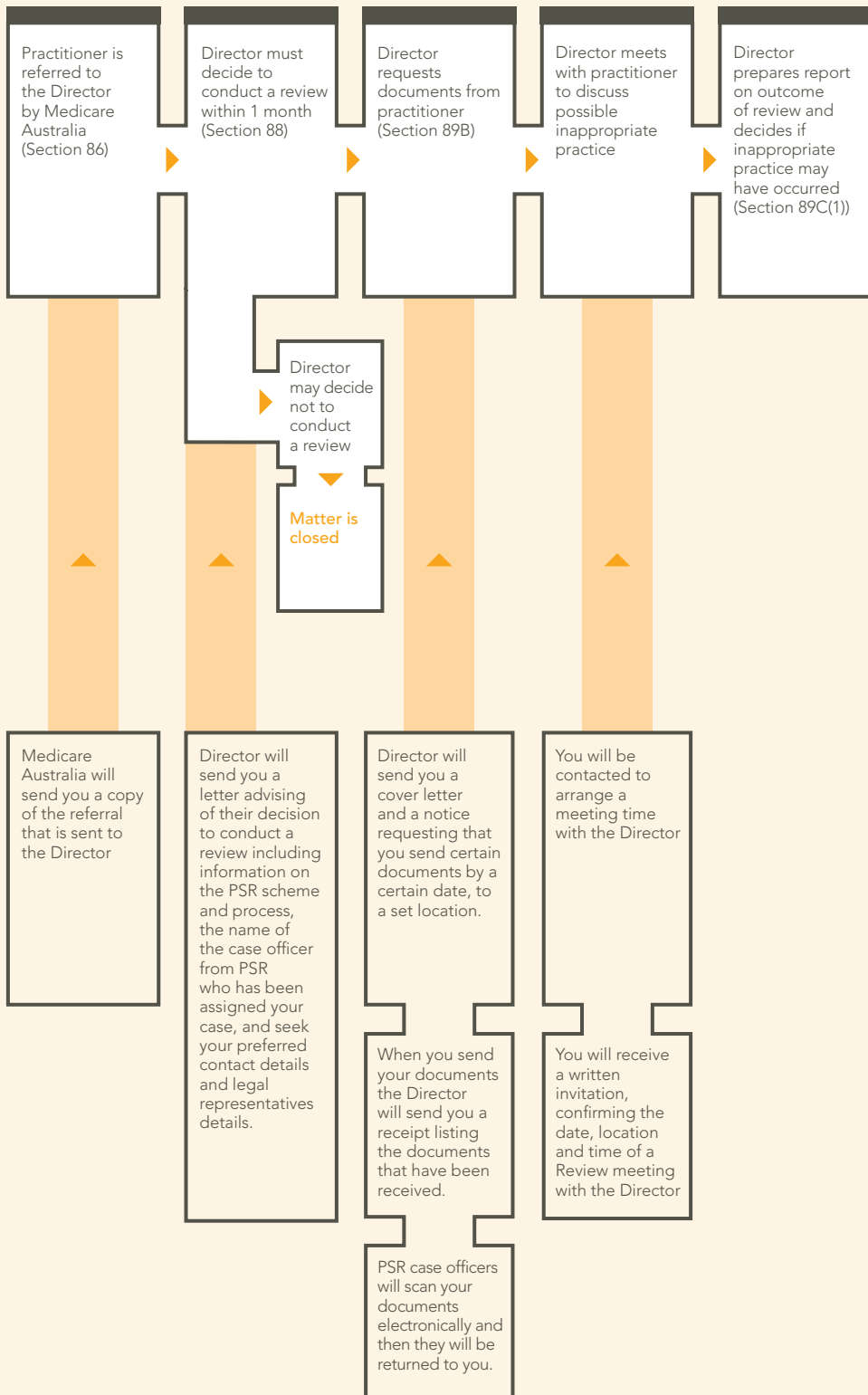
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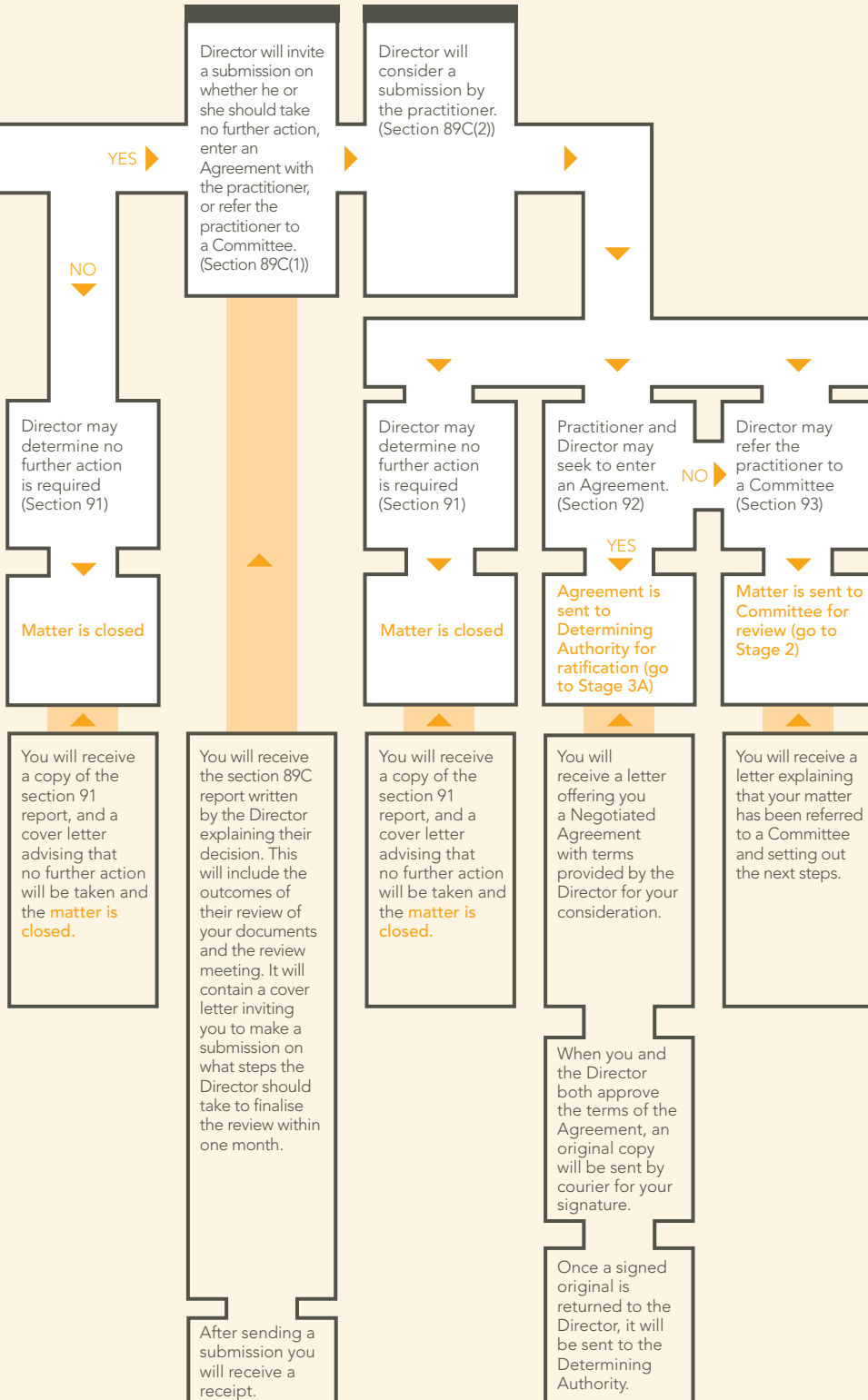


REVIEW BY THE DIRECTOR

Stage 1: Review by Director – including when you will receive information

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What occurs at the start of the process?

Medicare Australia will notify you of their request for the Director to undertake a review of your provision of services.

STEP 1.1 DECISION TO CONDUCT A REVIEW

THE DIRECTOR'S REVIEW IS NOT LIMITED TO THE SERVICES LISTED IN THE REFERRAL BY MEDICARE AUSTRALIA BUT MUST BE WITHIN THE REVIEW PERIOD

When the Director receives a request from Medicare Australia, he or she must decide whether to conduct a Review within one month.¹⁰ At this stage of the process, the Director is making a decision of whether or not the statistical information provided by Medicare Australia indicates that you may have a case to answer.

You will not be asked to make a submission at this time.

If the Director decides to review your case he or she may review all services that you have provided in the review period or may make a decision based on a selected sample.

Importantly the Director's review is not limited to the services listed in the referral by Medicare Australia.¹¹ However, only services provided during the review period can be considered.

In addition, the Director may engage a consultant or other professional to assist in making his or her decision on the Review.¹²

If the Director decides to review your case he or she will:

- request clinical records from you
- invite you to a review meeting
- write an 89C Report on his or her assessment
- invite and consider submissions from you on the 89C Report.

He or she will use your clinical records, information you have provided in the review meeting and any submissions you have made to decide how your case should be treated.

¹⁰ Section 88A of the *Health Insurance Act 1973*

¹¹ Section 88B(c) of the *Health Insurance Act 1973*

¹² Section 90 of the *Health Insurance Act 1973*

Requesting clinical records and other documents

Once the Director has made the decision to review your case, a request is sent to Medicare Australia for a sample of patient names to whom you have rendered or initiated Medicare or PBS services during the review period.

STEP 1.2

DECISION WHETHER INAPPROPRIATE PRACTICE MAY HAVE OCCURRED – THE SECTION 89C REPORT

ONCE THE DIRECTOR HAS RECEIVED YOUR RECORDS HE OR SHE MAY THEN SEEK TO MEET WITH YOU AT A REVIEW MEETING

Once the Director has received the sample from Medicare Australia, you, or your nominated legal adviser, will receive a letter requiring you to provide clinical records for each patient listed. This letter is a legal instrument referred to as a 'Notice to Produce'. You will be given a due date for supplying the clinical records which will be at least 14 days after the day you receive the Notice.

It is important to note that the production of documents is a legal requirement, and failure to produce documents requested in a valid notice can result in disqualification from Medicare.¹³

Once you have responded the Director will review the clinical records to assess whether, in his or her opinion, it appears there is a possibility that you have engaged in inappropriate practice for services provided during the review period.

Once the Director has received your records he or she may then seek to meet with you at a review meeting.

Review meeting

PSR will contact you, or your legal adviser, to arrange a meeting with the Director. The meeting is designed to facilitate an exchange of information, and will provide you with your first opportunity to provide a verbal explanation of your practice. In addition to your legal representative (should you have one) you may also wish to be accompanied by a family member or other support person. The Director will be accompanied by a PSR case officer and possibly another practitioner acting as a consultant under section 90 of the Act.

¹³ Section 89B of the *Health Insurance Act 1973*

These meetings follow the following format:

- the processes of PSR will be explained to you
- a history of your medical career will be sought along with information regarding your current practice
- Medicare Australia's referral and the statistical information will be discussed
- the results of the Director's initial examination of your clinical records will be discussed.

This meeting is intended to inform you of your rights and obligations throughout the PSR process.¹⁴ In addition it provides the Director with a greater understanding of your approach to practice, and an insight into the practice being investigated. This assists the Director to form a decision on whether or not to take no further action and close your matter, enter into an Agreement or proceed to a Committee.

Development by the Director of a section 89C Report

Following the meeting with you, the Director must send you a report called a section 89C Report.¹⁵ The report must include a summary of Medicare Australia's concerns and the findings the Director has made based on the review of your clinical records and the meeting with you.

In addition to the details and statistics contained in Medicare Australia's referral, the Director takes into account the following matters when making a decision under section 89C:

1. the indication of possible inappropriate practice he or she has identified from reviewing your clinical records
2. the Director's evaluation of the insight you have into the possible areas of inappropriate practice (that is your understanding of why you have been referred to PSR)
3. your discussion with the Director at the review meeting, including the verbal submissions you made (recorded by the attending case officer).

The report will be sent to you within 14 working days and will describe:

- the Medicare and / or PBS item numbers considered by the Director
- any concerns the Director has identified for each of those items

The report will contain the Director's finding on whether inappropriate practice may have occurred and a request for you to provide a written submission. You have one month from the date of receiving the Report to send your submission to the Director.¹⁶

Preparing your submission on the 89C Report

Your written submission should address the concerns raised by the Director in the section 89C Report. You should try to write a submission that addresses the Director's specific concerns set out in the report. We advise that you should discuss your submission with your legal adviser. Matters you may wish to address include:

- your experience and practice
- any special circumstances such as practice location or patient demographics that has impacted on your unusual statistics
- changes you have made to your practice since Medicare Australia's investigations

It is important to note that the primary purpose of the submission is to assist the Director to make a decision on how your case should proceed (that is whether the Director should dismiss your case, refer you to a Committee for review, or offer the opportunity to negotiate an Agreement). This may include providing further information to clarify matters that arose from either the review meeting or 89C Report. The context of your submission should focus on which decision the Director should make. It is therefore important for you to consider the Director's findings in light of the three choices he or she can make, and focus your submission on which of the outcomes, you consider is appropriate to your situation.

¹⁴ Part VAA of the *Health Insurance Act 1973*

¹⁵ Section 89C of the *Health Insurance Act 1973*

¹⁶ Section 89C(1)(b)(ii) of the *Health Insurance Act 1973*

IF THE DIRECTOR DECIDES TO TAKE NO FURTHER ACTION, THE PSR CASE OFFICER WILL CALL YOU, OR YOUR LEGAL ADVISER, TO NOTIFY YOU OF THE DECISION.

STEP 1.3

DECISION ON HOW TO PROCEED

There are a number of avenues available to the Director following consideration of your submission to the section 89C Report. These are to:

- take no further action (section 91 of the Act)
- offer to enter into a Negotiated Agreement (section 92 of the Act)
- refer your matter to a Committee of your peers (section 93 of the Act).

Stage 1A – Decision to take no further action under section 91

If the Director decides to take no further action, the PSR case officer will call you, or your legal adviser, to notify you of the decision. The Director must also provide you with a written report explaining this decision. The Director will contact Medicare Australia to inform them of the outcome of the case.

If the Director decides to take no further action, your matter will be closed.

Stage 1B – Decision to take action under section 92 (enter a Negotiated Agreement)

One of the options available to the Director at this stage of the process is to offer to enter into a Negotiated Agreement with you under section 92 of the Act. It is at the discretion of the Director to offer the option of a Negotiated Agreement. This option is most likely to be used when you and the Director have similar views about what has occurred, where there is no significant disagreement, and no suspicion that the level of inappropriate practice was widespread or endangered public safety.

Should the Director take this option, the PSR case officer will contact you, or your legal advisor, to discuss the potential terms of the Agreement. PSR staff will then commence drafting an Agreement.

The Agreement must include:

- an acknowledgement by you that you have engaged in inappropriate practice in relation to certain MBS and / or PBS items
- a binding decision on what sanctions will apply in relation to your matter (such as a reprimand, repayment of benefits, full or partial disqualification from Medicare or removal of your authority to prescribe or dispense PBS medicines for an agreed period of no more than three years).

Should you support the terms of the Agreement, the document will be forwarded to you, or your legal adviser, for your signature.

The signed Agreement will then be sent to the Determining Authority for ratification. Please refer to *Stage 3: Consideration by the Determining Authority (Step 3.3)* on page 61 for further information on this process and the Determining Authority's powers regarding Agreements.

You do not have to enter into an Agreement with the Director. Should you and the Director fail to negotiate mutually acceptable terms or if you believe that you have not engaged in inappropriate practice, your matter will be referred to a Committee for consideration. If you do not wish to enter an Agreement you should communicate this to the Director.

It is important to note that the Director cannot determine if you have engaged in inappropriate practice. Only a Committee can determine whether your conduct in connection with the rendering or initiation of services is acceptable to the general body of your peers.

What can you do to assist your case during this step?

Entering into an Agreement with the Director is binding, and the terms of the Agreement must be negotiated by each party.¹⁷ You may wish to propose entering an Agreement in your written submission to the section 89C Report. Alternatively PSR will contact you (either by phone or letter) proposing to enter an Agreement, and outlining the terms which the Director considers suitable in your case. The Director will form his or her opinion of what terms are suitable in your case by considering:

- his or her findings from the review of your clinical records
- the review meeting
- submissions you have made.

You have the opportunity to negotiate with the Director on what you consider to be suitable in your case. The Director will consider any submissions you make regarding the terms of the Agreement during these negotiations.

It is important that at this stage of the process you focus on the effect the sanctions outlined in any draft Agreement will have on you and your practice, and present reasons and evidence supporting why any changes you suggest should be made. Specifically you may wish to present details on why the sanctions outlined in a draft Agreement may be inappropriate, disproportionate, or unsuitable to your case, and the extent/frequency of inappropriate practice you are acknowledging.

Referral to a Committee of your Peers

If the Director considers your conduct needs further investigation, or an Agreement is unable to be reached, your matter will be referred to a Committee of your peers.¹⁸

Please refer to *Stage 2: Review by a Committee of Peers* on page 41 for further information on this process.

¹⁷ Section 92(4)(b) of the *Health Insurance Act 1973*

¹⁸ Section 93 of the *Health Insurance Act 1973*

STAGE 1 CHECKLIST

The following steps will have occurred during stage one of the process:

- ✓ Medicare Australia sends you a copy of the request to review
- ✓ The Director informs you of the decision to conduct a review
- ✓ The Director sends you a Notice to Produce, requiring you to send documents to PSR
- ✓ You respond to the Notice to Produce by providing clinical records
- ✓ The Director sends you an acknowledgement listing the documents you have produced
- ✓ The Director returns your documents after they have been electronically copied
- ✓ The Director invites you to a Review Meeting
- ✓ You and the Director meet
- ✓ You receive the Director's s89C Report, which contains the decision on whether inappropriate practice may have occurred
- ✓ If the Director's report finds no evidence that inappropriate practice occurred your matter will end. If the Director's report finds that inappropriate practice may have occurred you will be invited to respond
- ✓ You may send a submission on the s89C Report, containing your view on whether you and the Director should enter an Agreement, or whether your case should be referred to a Committee
- ✓ The Director will acknowledge and then consider your submission
- ✓ The Director will advise you of the decision to seek to enter an Agreement or refer you to a Committee
- ✓ If the decision to enter an Agreement is made, you and the Director will negotiate the terms of the Agreement. You will be invited to provide submissions in the terms of the Agreement
- ✓ If the decision to refer to a Committee is made, you will receive a copy of the Referral to a Committee

IT IS IMPORTANT TO NOTE THAT THE DIRECTOR CANNOT DETERMINE IF YOU HAVE ENGAGED IN INAPPROPRIATE PRACTICE.

STAGE 2:

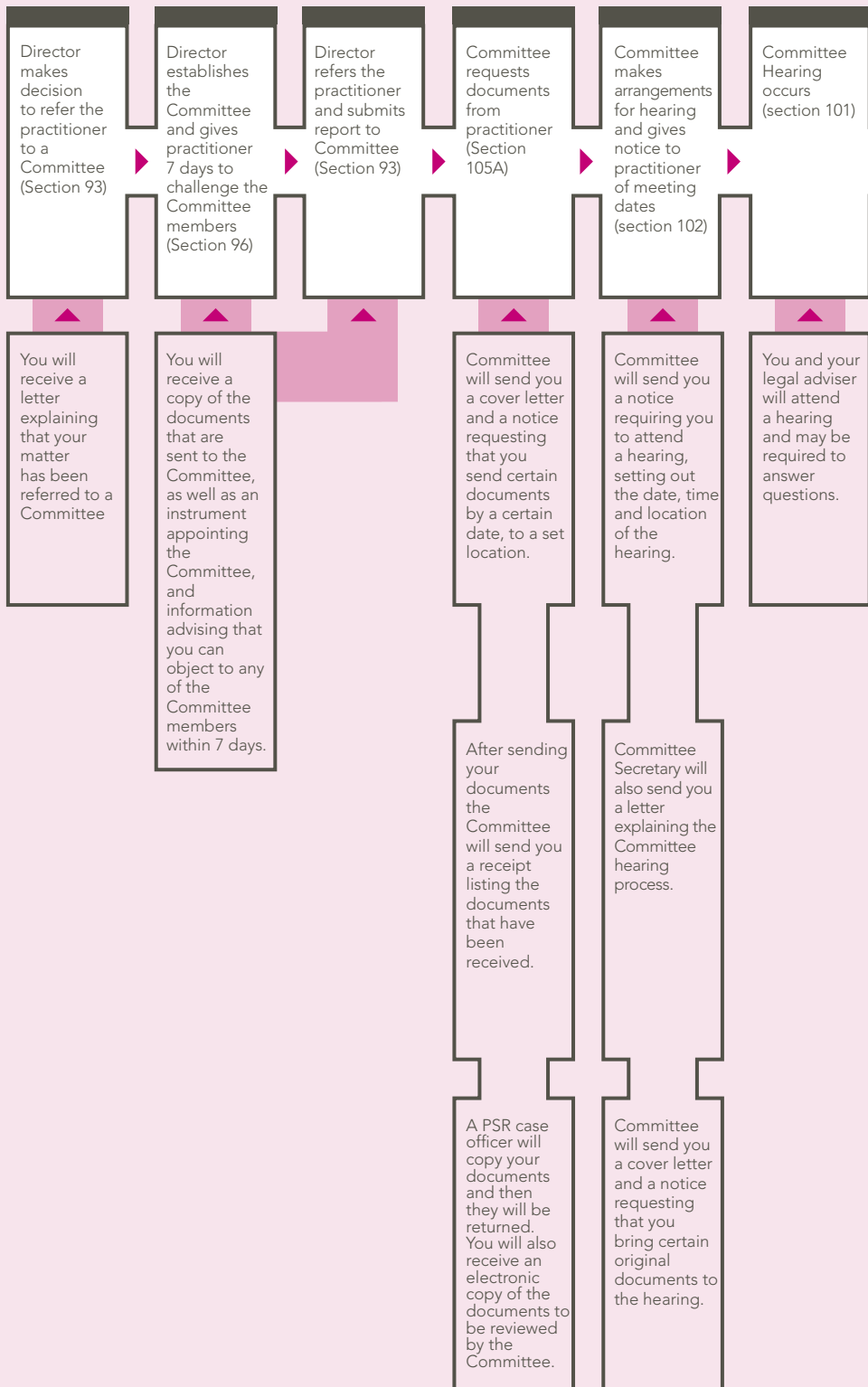
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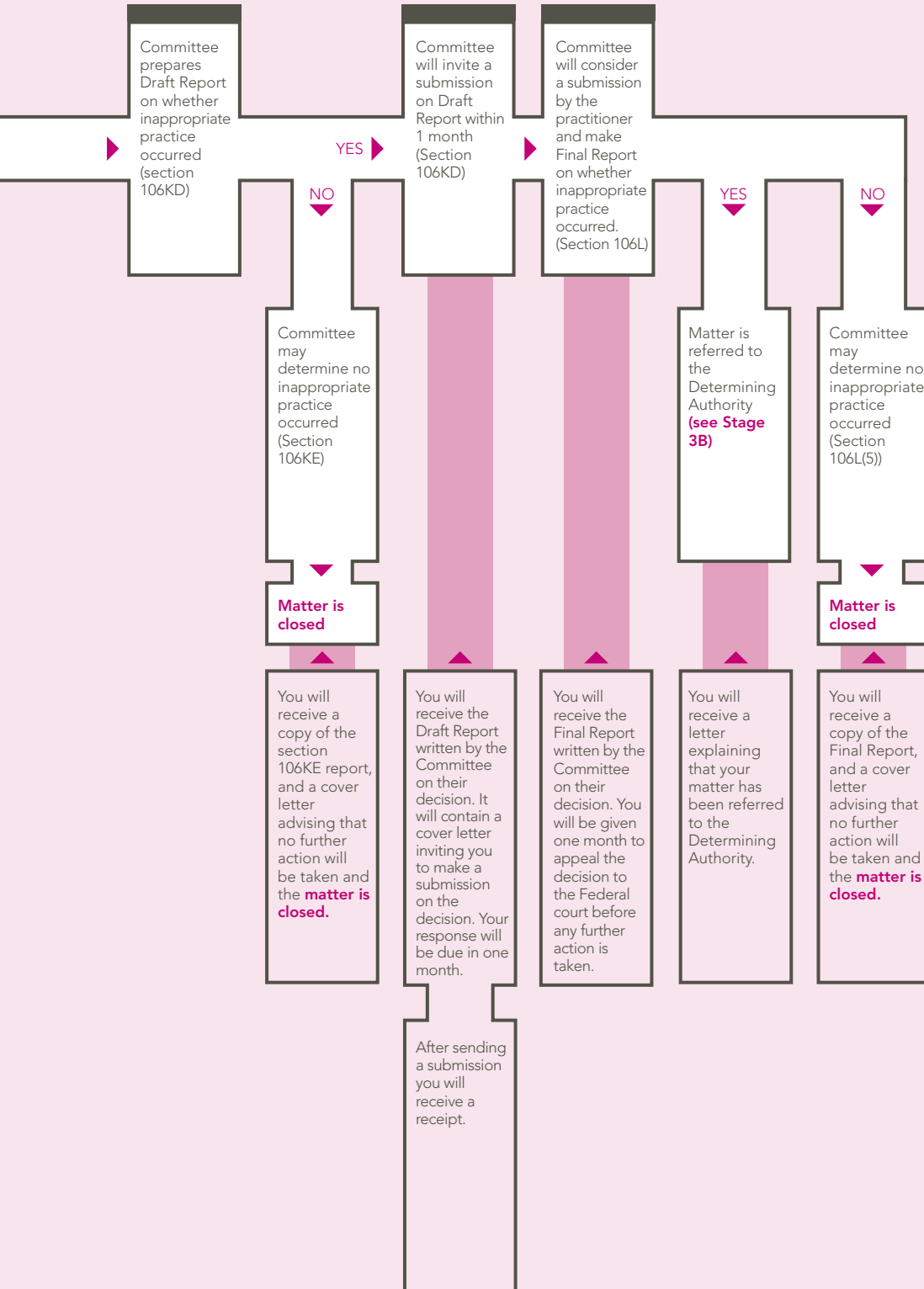


REVIEW BY A COMMITTEE OF PEERS

Stage 2: Review by a Committee – including when you will receive information

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STEP 2.1

REFERRAL TO A COMMITTEE

ONLY A COMMITTEE CAN DETERMINE WHETHER YOUR CONDUCT IN CONNECTION WITH THE RENDERING OR INITIATION OF SERVICES IS ACCEPTABLE TO THE GENERAL BODY OF YOUR PEERS.

In this stage of the process a Committee of your peers is established to make a decision on whether you engaged in inappropriate practice. The Committee of peers operates under the Act and makes its decisions on a majority basis.

If the Director decides to send your case to a Committee of your peers the PSR case officer will call you, or your legal adviser, to advise that following consideration of your submissions and other information received during the review stage the Director has decided to refer your matter to a Committee.¹⁹ You may also be referred to a Committee if you and the Director were unable to enter a Negotiated Agreement. The Director must make the referral within 12 months of the original decision to conduct a review. You, or your legal adviser, will receive a copy of the referral and a letter from the Director explaining the process. The Director will provide an outline of his or her concerns in the section 93 Report, which forms part of the referral to the Committee. The referral will include:

- the Instrument appointing the Committee, including the names of Committee members
- the Instrument of Referral
- the Director's Report under section 93 of the Act
- Medicare Australia's Request to Review
- a summary of relevant sections of the Act

Panel Members and the appointment of a Committee

A Committee must include a Deputy Director of PSR from your profession and two other Panel members from your specialty. One or two more Panel members may also be appointed by the Director to give the Committee a wider range of clinical expertise.²⁰

Panel members and Deputy Directors must be currently practicing and have sufficient experience in, and knowledge of, current clinical practice to be able to represent their body of peers. In addition, they are recognised as an appropriate member of their profession and specialty to represent their peers on a Committee. They must also be both willing and available to sit in Committee hearings and make proper enquires into the appropriateness of practice of one of their peers.

¹⁹ Section 93 of the *Health Insurance Act 1973*

²⁰ Section 95 of the *Health Insurance Act 1973*

Once a Committee has been formed for your case you will be advised of the identity of each of the Committee members.

You may challenge the appointment of a Committee member on the grounds of bias.²¹ You may wish to seek legal advice to assist with this challenge. The challenge must be made in writing to the Director within seven days after you have received the copy of the referral. You must set out the basis on which the challenge is made.

The Director will decide if the challenge is justified. If necessary, the Director will ask you for further information on the challenge. As soon as practicable after making his or her decision on the challenge, the Director will provide you with written notice of the decision. If the challenge is justified, the Director will revoke the appointment and appoint another member to the Committee. If you are unhappy with the Director's decision you may challenge it in the Federal Court or Federal Magistrates Court before your case progresses. Further information on appeals is provided on page 65.

What can you do to assist your case during this step?

It is recommended that you engage legal representation if you have not already done so. The Committee process is often the most daunting element of the PSR process and involves preparation of evidence and attendance at a hearing.

To prepare for the Committee stage of the process you should:

- review the copy of the referral and consider whether one or more of the Committee members is, or is likely to be, biased
- If you wish to challenge the appointment of a Committee member, you, or your legal advisor, must write to the Director within seven days of receiving the copy of the referral
- Contact the PSR case officer appointed to your matter who can assist you should you have any questions or concerns about the process

**IT IS RECOMMENDED THAT YOU SEEK LEGAL ADVICE
IF YOU HAVE NOT ALREADY DONE SO.**

²¹ Section 96 of the *Health Insurance Act 1973*

Once the Director has appointed a Committee of peers they will be referred your case. You will receive a copy of the documents that the Director has sent to the Committee as well as a copy of the instrument the Director has written to form the Committee.

STEP 2.2

PRE-HEARING ARRANGEMENTS INCLUDING PRODUCTION OF RECORDS

THE LIST OF RANDOMLY SELECTED PATIENTS WILL BE SENT TO YOU, OR YOUR LEGAL ADVISER, WITH THE NOTICE TO PRODUCE.

Requesting clinical records and other documents

Once the Committee has been established, it will meet to decide which Medicare services and PBS items they will examine. The Committee will request clinical record for a sample of services which you provided or initiated during the review period. The list of randomly selected patients services generated by Medicare Australia will be sent to you, or your legal adviser, with the Notice to Produce Document. The Notice to Produce will require you to provide the clinical record for those patients.²² You are required to send the original clinical records to the office of PSR by the due date indicated in the Notice which will be at least 14 days after of the date of receipt of the Notice. Generally, the Committee will request a maximum of 120 patient records. These records will be a different sample to those reviewed by the Director in Stage 1.

PSR will provide you with lockable plastic tubs for secure courier transport of documents to and from your practice. When they arrive at PSR, case officers will arrange for your records to be electronically scanned, and returned to you at the first available opportunity. This ensures the impact to your practice is minimised. You may wish to take a copy of the records to allow the continued treatment of your patients whilst the original records are with PSR.

²² Section 105A of the *Health Insurance Act 1973*

PSR will scan all of the material in the clinical records pertaining to the specific review period. In addition to returning the original clinical records you will receive a hard copy and electronic copy of the records that will be used by the Committee. As these are the records that the Committee will be reviewing during the hearing it is advisable that you bring this version to the hearing. It is common practice that you will be served with a Notice requiring that you bring the original records to the hearing as there may be times that the Committee will seek clarification on an issue by looking at the original record.

Setting a hearing date

Once a referral from the Director is received, and the Committee has reviewed your clinical records, the Committee will decide whether they will take no further action, or set a hearing date to further consider your matter.

If the Committee decides to hold a hearing the members will advise the PSR case officer of their availability to attend a hearing. Coupled with the availability of an appropriate venue in your capital city, tentative hearing dates will then be set. The PSR case officer will contact you, or your legal adviser, to discuss the proposed hearing dates and confirm your availability to attend the hearing on the proposed dates.

ONCE THE HEARING DATES HAVE BEEN SET YOU WILL RECEIVE A NOTICE TO ATTEND THE HEARING WHICH WILL STATE THE TIME, DATE AND VENUE OF THE HEARING

PSR generally uses rooms at the Administrative Appeals Tribunal in each capital city for these hearings.

Once the hearing dates have been set you will receive a Notice to Attend the Hearing²³ which states the time, date and venue of the hearing. In most cases, you will also receive a Notice to Produce at this time requiring the originals of the clinical records to be reviewed by the Committee. You will receive a letter from the PSR case officer with this notice, which will contain:

- an overview of the process used by the Committee to examine service you have provided
- explanation of the sampling methodology used by the Committee if used
- an outline of the Committee hearing process including advice on the recording of the hearing and witnesses
- details of your rights and responsibilities at the hearing
- an overview of the Draft Report process.

If you have any queries regarding the Committee process at this stage, you are encouraged to contact your legal adviser or PSR case manager.

²³ Section 102 of the *Health Insurance Act 1973*

Attending the Hearing

A hearing is generally held from 9.00am – 5.00pm and can run over 4 to 6 days. However it is unlikely that you would be expected to attend the hearing for more than two consecutive days at a time.

STEP 2.3

THE COMMITTEE HEARING

The Committee may adjourn throughout the day to confer and also to allow you to have a break from questioning. You may ask the Chair for a break at any stage. A lunch break of between 45 - 60 minutes, and a morning and afternoon break of between 15 - 30 minutes is usual practice.

The hearing is a closed hearing²⁴ in which only the following people will be in attendance:

- the Committee consisting of a Chair and Panel members. They will be seated at a bench directly in front of you
- the PSR case officer, assistant and the Committee's legal adviser
- you and any person accompanying you (you could choose to be accompanied by a lawyer, adviser and support person such as a spouse).

It is important to note that you are required under law to attend the hearing.²⁵ You can be fully disqualified from Medicare if you fail to:

- appear
- give evidence
- answer questions when required.²⁶

You are responsible for your costs associated with attending the hearing including travel and accommodation.

**THE PSR CASE OFFICER IS THE CONTACT PERSON
ASSIGNED TO ASSIST YOU AND YOUR LEGAL ADVISER
DURING THE HEARING.**

²⁴ Section 98(2) of the *Health Insurance Act 1973*

²⁵ Section 102(4) of the *Health Insurance Act 1973*

²⁶ Section 105(1) of the *Health Insurance Act 1973*

During the Hearing

The Committee's role during the hearing is to collect information that will assist them to determine whether your conduct in connection with the rendering or initiation of services would be unacceptable to the general body of your peers. To do this, the Committee will consider, whether the services you provided were justified and appropriate in light of the Medicare item descriptor and / or PBS requirements, as well as assessing the adequacy of your clinical records. The Committee will use the clinical records requested from you and any other material provided by you, Medicare Australia or the Director to make their decision.

At the commencement of the hearing, the Chair will generally make an opening statement informing you of:

- the structure of the hearing
- the Committee process
- the issues before the Committee
- the roles of any advisers accompanying you
- your rights and obligations during the hearing.

You will be invited to make any opening comments and tender any documents you would like the Committee to consider. For the remainder of the hearing the Committee will question you about specific services you have provided, and will spend time examining the clinical records you have produced. All Committee members may take turns questioning you.

IT IS IMPORTANT TO NOTE THAT THE HEARING IS NOT A TRIAL. RATHER, IT IS AN OPPORTUNITY FOR YOU TO CLARIFY THE INFORMATION BEFORE THE COMMITTEE, AND PROVIDE ANY NEW EVIDENCE TO ASSIST YOUR CASE.

The purpose of the questioning is to obtain evidence relevant to the Committee's investigation. This is helpful for both you, and the Committee, as this evidence may include facts directly relating to the issues being considered (including your own actions and observations) or an expert witness's opinion on a situation. Questions directed to you by Committee members are not designed to elicit a confession of inappropriate practice from you.

All conversations and statements made during a Committee Hearing are recorded on an audio file, and later made into a transcript of the hearing. This enables the Committee, yourself, and your legal representative to refer back to what has been said, and ensures that there is an accurate record of proceedings. You will be able to access the transcript of the hearings at your own cost, and PSR case officers can assist you to do this and provide you with a schedule of fees and charges. You can request changes to the transcript if you believe it is inaccurate.

There are a number of rights you have during the Committee hearing.²⁷ You have the right to:

- be accompanied by a lawyer or another adviser
- call witnesses to give evidence (other than evidence providing reference to your character)
- produce written statements providing reference to your character
- question a person giving evidence at the hearing
- address the Committee on questions of law arising during the hearing
- after the conclusion of the taking of evidence, to make a final address to the Committee on questions of law, the conduct of the hearing and the merits of the matters to which the hearing relates including addressing the Committee on questions of clinical practice.

Your legal adviser or other adviser who has accompanied you to the hearing also has rights.²⁸ Advisers accompanying you are entitled to:

- provide you with advice during the hearing
- address the Committee on questions of law that may arise during the hearing (if they are a legal adviser)
- after the conclusion of the taking of evidence, make a final address to the Committee on questions of law (if they are a legal adviser), the conduct of the hearing and the merits of the matters to which the hearing relates

Only one of your advisers is entitled to make a final address to the Committee.²⁹ You will be responsible for the cost of any advisers you use during the process.³⁰

If in the course of their investigation the Committee becomes aware of any matter that is of concern to the profession (for example a threat to life or health), the Committee must notify the Director in writing. The Director must then refer the matter to the Medical Board of Australia.³¹

After the hearing is completed the Committee will spend some time considering your case and analysing your matter. They will then produce a Draft Report on your matter.

²⁷ Section 103(1) of the *Health Insurance Act 1973*

²⁸ Section 103(2) & 103(3) of the *Health Insurance Act 1973*

²⁹ Section 103(4) of the *Health Insurance Act 1973*

³⁰ Section 103(5) of the *Health Insurance Act 1973*

³¹ Section 106KC of the *Health Insurance Act 1973*

Presentation of the Committee's Draft Report

After considering all the information and evidence, the Committee will produce a Draft Report³² containing findings on your conduct. Usually the Draft Report will be sent to you within 3 months from the hearing.

STEP 2.4

THE COMMITTEE'S DRAFT REPORT

The Draft Report will contain:

- a summary of your case to date
- details of the information and evidence the Committee has considered
- reasons for the Committee's decision to reject or give weight to some evidence
- the Committee's findings and reasoning regarding where it has or has not found inappropriate practice.

The Committee will send you, or your legal adviser, the Draft Report along with an invitation to make a submission.

If the Committee finds you have not practised inappropriately, your matter will be closed.

If the Committee finds that inappropriate practice has occurred, you will have the opportunity to make submissions on the Draft Report.

The invitation to make a submission provides you with an opportunity to suggest changes to the Draft Report including providing additional information to support your matter. You have one month from the date that you receive the Draft Report to provide your written submission to the Committee. It is critical that you meet this deadline.

Preparing your submission on the Committee's Draft Report

The purpose of the written submissions is for you to suggest changes to the Draft Report and provide further clarification in response to the individual cases where the Committee has found inappropriate practice. Your submissions may assist the Committee to reassess and remove a finding of inappropriate practice on individual services. It is therefore important for you to consider the Committee's specific findings and respond with evidence or information. This is the key step where you can focus your submission on addressing the findings the Committee has made.

It is critical to address any of the findings in the Draft Report that you may disagree with.

³² Section 106KD of the *Health Insurance Act 1973*

One month after receiving submissions on the Draft Report the Committee must prepare its Final Report.³³

STEP 2.5

THE COMMITTEE'S FINAL REPORT

The Committee will consider any submission you have made in response to the Draft Report, and note in the Final Report what additional submissions were provided for their consideration, and how these submissions were considered.

The Committee will send the Final Report to both you, and the Director, on the same day. You will have one month from the receipt of the Final Report to seek judicial review in the Federal Court or the Federal Magistrates Court. Your legal advisor will be able to assist you should you wish to pursue this avenue. If you do not seek a judicial review, the Committee will send the Final Report to the Determining Authority one month after you have received it. The Determining Authority will then decide what sanctions will apply in your case. You will have an opportunity to make submissions on the sanctions

Please refer to page 59 for more information on the Determining Authority process.

Where the Committee finds no inappropriate practice

If the Committee finds that you did not engage in inappropriate practice they will provide a Final Report to you, the Director and Medicare Australia and no further action will be taken. You will usually receive this Final report within 3 months after the hearing.

THE COMMITTEE WILL SEND THE FINAL REPORT TO BOTH YOU, AND THE DIRECTOR, ON THE SAME DAY.

³³ Section 106L of the *Health Insurance Act 1973*

STAGE 2 CHECKLIST

The following steps should have occurred during stage two of the process:

- ✓ The Director sends you a letter explaining that your matter has been referred to a Committee
- ✓ You will also receive a copy of the documents that the Director has sent to the Committee as well as a copy of the instrument the Director has written to form the Committee
- ✓ If you wish to object to the people proposed to be on the Committee, you must write to the Director
- ✓ The Committee, once formed, will meet privately and send you a Notice to Produce, requiring you to send documents to PSR
- ✓ You respond to the Notice to Produce
- ✓ The Committee sends you an acknowledgement listing the documents you have produced
- ✓ The Committee returns your documents after they have been electronically copied
- ✓ The Committee will send you a Notice requiring you to attend a hearing
- ✓ The Committee will send you a letter requesting that you bring certain records to the hearing
- ✓ You attend the hearing
- ✓ The Committee will send you the Draft Report of their decision and invite you to make a submission
- ✓ You may choose to make a written submission
- ✓ The Committee will acknowledge and then consider your submission
- ✓ The Committee will issue a Final Report. If the Final Report does not contain a finding of inappropriate practice your matter will be closed
- ✓ If the Final Report contains a finding of inappropriate practice the Committee will wait one month and then send you a letter confirming that the Final Report has been sent to the Determining Authority

THE
COMMITTEE
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REPORT TO THE
DETERMINING
AUTHORITY
ONE MONTH
AFTER YOU
HAVE RECEIVED
THE FINAL
REPORT. THE
DETERMINING
AUTHORITY
WILL THEN
DECIDE WHAT
SANCTIONS
WILL APPLY IN
YOUR CASE.

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CONSIDERATION BY THE DETERMINING AUTHORITY

Stage 3: Determining Authority – including when you will receive information

3A

Director refers signed copies of section 92 Negotiated Agreements to the Determining Authority (Section 106R)

Determining Authority will meet within 1 month to decide whether to ratify the Agreement (Section 106R(2))

You will receive a copy of all the documents sent to the Determining Authority. This will include the signed Agreement, Director's Review Report, and the original referral from Medicare Australia.

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3B

Committee refers matter with Final Report to Determining Authority(106L(3))

Determining Authority will invite a submission on Final Report within 1 month (Section 106SA)

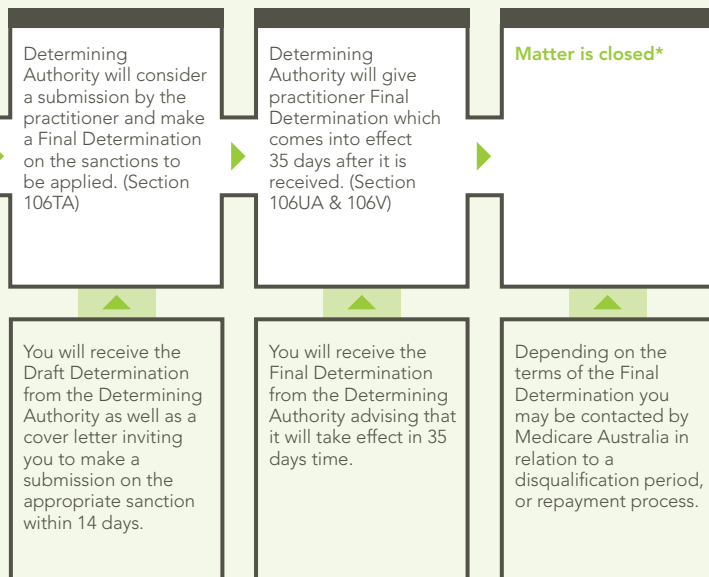
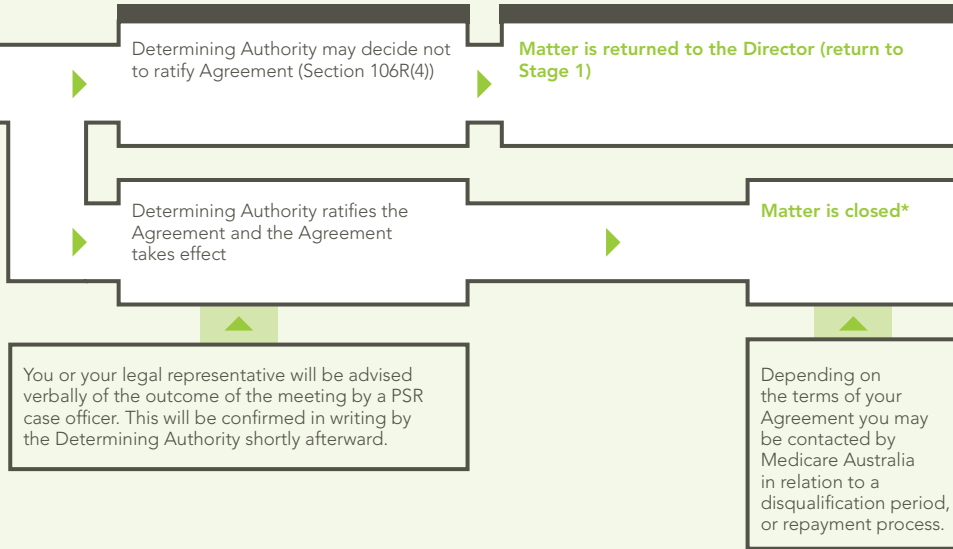
Determining Authority will consider a submission by the practitioner and make a Draft Determination on the sanctions they intend to apply. (Section 106T)

Determining Authority will invite a submission on Draft Determination within 14 days (Section 106T)

You will receive a copy of all the documents sent to the Determining Authority. This will include the Final Committee Report, the Director's Review Report, and the original referral from Medicare Australia.

You will receive a letter from the Determining Authority inviting you to make a submission on the appropriate sanction.

You will receive the Draft Determination from the Determining Authority as well as a cover letter inviting you to make a submission on the appropriate sanction within 14 days.



**If you have had a two or more previous Final Determinations from PSR, you will be referred to the Medicare Participation Review Committee*

The Determining Authority is an independent statutory body established under the Act.³⁴

WHAT IS THE DETERMINING AUTHORITY?

The Determining Authority has two distinct functions, which are to:

- consider any Agreement entered into by you and the Director under section 92 of the Act and to ratify, or refuse to ratify, your Agreement
- issue a Final Determination including sanctions where a Committee has found that you have engaged in inappropriate practice for a matter referred under section 93 of the Act.

The Determining Authority consists of a minimum of three members including:

- a Chair, who is a medical practitioner
- a member who is not a practitioner (i.e. is a member of the public)
- a member who is a practitioner in the same profession as you.

The members of the Determining Authority are appointed by the Minister after consultation with the AMA or organisations or associations representing the interests of the profession to which you belong.

THE MEMBERS OF THE DETERMINING AUTHORITY ARE APPOINTED BY THE MINISTER

³⁴ Section 106Q of the *Health Insurance Act 1973*

What occurs at the start of the process?

The Determining Authority receives section 92 Agreements referred by the Director, and Final Committee Reports where a finding of inappropriate practice has been made by a majority of Committee members.

STEP 3.1

REFERRAL TO THE DETERMINING AUTHORITY

THE DETERMINING AUTHORITY CANNOT REVISIT A COMMITTEE'S FINDING OF INAPPROPRIATE PRACTICE.

On receipt of a section 92 Agreement the Determining Authority lists it for decision at the next meeting. The Determining Authority will then ratify, or refuse to ratify, your Agreement.

On receipt of a Final Committee Report the Determining Authority must, within one month, give you written invitation to make a written submission regarding the sanctions the Authority should apply in your case.³⁵ Any written submission must be made within one month.

The Determining Authority cannot revisit a Committee's finding of inappropriate practice. Its focus is limited to making a draft and then a Final Determination containing one or more of the sanctions set out in section 106U of the Act. Those sanctions are:

- a reprimand
- counselling
- partial disqualification from claiming a Medicare benefit of up to 3 years
- full disqualification from claiming a Medicare benefit of up to 3 years
- a full or partial repayment of Medicare benefits claimed within the review period (to an extent to which the practitioner was found to have practised inappropriately)
- a full disqualification from the PBS of up to 3 years.

Consideration of your matter by the Determining Authority is generally the final step in the process, and represents the end of your matter. However, should the Determining Authority not ratify your section 92 Agreement further consideration of your matter will need to occur (this could include re-negotiation of the Agreement or referral of your matter to a Committee).³⁶ All matters considered by the Determining Authority regarding Final Committee Reports will be finalised at this stage of the process.

³⁵ Section 106SA of the *Health Insurance Act 1973*

³⁶ Section 92A of the *Health Insurance Act 1973*

During the meeting

The Determining Authority generally meets in Canberra on a monthly basis.

STEP 3.2 THE DETERMINING AUTHORITY MEETING

At meetings of the Determining Authority, the following people are in attendance:

- the Determining Authority (the Chair, a member who is not a practitioner and a member who is a practitioner in the same profession as you)³⁷
- designated PSR staff members who will coordinate the Determining Authority, and perform administrative work on your case.

Meetings of the Determining Authority are held in private as decisions made at this stage of the process predominantly require it to review information already at hand (the Committee Final Report or the section 92 Agreement).

Decisions of the Determining Authority are reached by majority vote with each member holding one vote. The Chair presides at all meetings of the Determining Authority.

If in the course of their consideration the Determining Authority becomes aware of any matter that is of concern to the profession (for example a threat to life or health), the Determining Authority must notify the Director in writing. The Director must then refer the matter to the appropriate professional body.³⁸

³⁷ Section 106ZPA(2) of the *Health Insurance Act 1973*

³⁸ Section 106UAA of the *Health Insurance Act 1973*

Should you have elected to enter into a section 92 Agreement with the Director, your matter will be presented to the Determining Authority for ratification.

STEP 3.3

SECTION 92 AGREEMENTS

PART OF THE DETERMINING AUTHORITY'S ROLE IS TO ENSURE THAT NEITHER YOU, NOR THE DIRECTOR, HAVE MADE AN UNFAIR AGREEMENT AND THAT THE OUTCOME IS SUITABLE FOR THE CIRCUMSTANCES IN YOUR MATTER.

The Determining Authority has one month to make a decision to ratify a section 92 Agreement. If the Authority fails to make a decision within one month, the Agreement is automatically ratified.³⁹

Ratifying a section 92 Agreement

The Determining Authority will consider all the documents provided by the Director. This will include:

- the original referral from Medicare Australia
- the Director's Review Reports (sections 89C and 92)
- any submissions you have made
- the signed section 92 Agreement.

The Determining Authority will take into account these documents to determine if the terms of your Agreement are fair and consistent with similar past cases. Part of the Determining Authority's role is to ensure that neither you, nor the Director, have made an unfair Agreement and that the outcome is suitable for the circumstances in your matter.

The Determining Authority will decide to either ratify or refuse to ratify the Agreement and will advise you, and the Director, in writing of its decision within 7 days.

If the Agreement is ratified you will be advised of the date of effect for the Agreement. Once ratified the Agreement is binding on you and the Director.

If the Agreement is not ratified the Determining Authority will advise you, and the Director, and provide reasons for the refusal. The Director will then seek to either:

- enter a new and different section 92 Agreement with you
- or
- If you cannot reach a new Agreement, refer your matter to a Committee.

³⁹ Section 106R of the *Health Insurance Act 1973*

Referral of Committee Final Report to the Determining Authority

Within one month of receiving a Final Committee Report, the Determining Authority must invite you to make a written submission about the sanctions the Determining Authority should impose on you.

STEP 3.4 COMMITTEE FINAL REPORT

THE DETERMINING AUTHORITY WILL CONSIDER THE ISSUES THAT YOU RAISE IN SUBMISSIONS WHEN IT CONSIDERS WHAT SANCTIONS ARE APPROPRIATE IN YOUR PARTICULAR CASE.

Preparing Submissions to the Determining Authority

As this stage of the process relates to what sanctions will be applied (as you have already been found by a Committee to have engaged in inappropriate practice), your submission should specifically relate to this decision (i.e. what sanctions should apply). There is no opportunity to seek further review of whether or not you have engaged in inappropriate practice, as this is outside the Determining Authority's role.

The Determining Authority is a separate decision making body and is provided with a copy of the Committee's Final Report, including any attachments. You will receive a copy of the documents that are sent to the Determining Authority. If there is any additional material that you would like the Determining Authority to take into account, including any submissions you or your representatives may have made to the Committee, you should make arrangements for that information to be made available for the Determining Authority's consideration, and attach it to your submission.

If you choose not to make a submission, the Determining Authority will make its Draft and then its Final Determination based on the material available to it.

If you do make a submission you should include information relevant to the Determining Authority's task of deciding which sanctions it will include in its Determination.

You should also consider whether there is any evidence that you can provide in support of your submissions. If there is, please provide that to the Determining Authority with your submissions. If you choose to provide testimonials, they should be relevant to the Determining Authority's task of making a determination about the sanctions to be applied based on the Committee's Final Report. Please consider the value of testimonials that are made without reference to a Committee's finding of inappropriate practice.

The Draft Determination

The Determining Authority will consider all the documents before it, including any submissions you make, when preparing its Draft Determination.

STEP 3.5

THE DETERMINING AUTHORITY'S DRAFT DETERMINATION

The information before the Determining Authority will include:

- The Committee's Final Report, which will attach
 - the original referral from the Director (including the Director's Report and original referral from Medicare Australia)
 - submissions you have made on the Draft Report
 - other relevant material provided during the process
- submissions you have made to the Determining Authority
- previous findings or acknowledgments of inappropriate practice.

The Determining Authority will consider the issues that you raise in submissions as it considers what sanctions are appropriate in your particular case.

Following consideration of the information at hand, the Determining Authority will submit to you, and the Director, the Draft Determination. The Draft Determination includes:

- the Determining Authority's preliminary decision on the sanctions that should apply to your case
- the reasons for the decision
- details of the material the Determining Authority relied on in making its decision.

Your submission at this stage of the process should focus on the details of the Draft Determination and the reason and evidence why any change you suggest should be made. Specifically you may wish to present details on why a preliminary decision of the Determining Authority may be inappropriate, disproportionate, or unsuitable to your case.

YOU WILL BE PROVIDED WITH THE DRAFT DETERMINATION AND AN INVITATION TO MAKE A WRITTEN SUBMISSION WITHIN 14 DAYS.

The Determining Authority will take into account any submissions you have made on the Draft Determination and following consideration of your submission, a Final Determination will be made.

STEP 3.6

THE DETERMINING AUTHORITY'S FINAL DETERMINATION

The Final Determination will include:

- the Determining Authority's final decision on the sanctions that should be applied
- the reasons for the decision
- details of the material the Determining Authority relied on in making its decision including any submissions on the Draft Determination you have made.⁴⁰

The Final Determination will be provided to you and the Director.

⁴⁰ Section 106U of the *Health Insurance Act 1973*

STEP 3.7

CLOSING A MATTER – IMPLEMENTING THE DETERMINING AUTHORITY'S DECISION

Section 92 Agreements

Once ratified the Agreement is binding on you and the Director.

The Agreement will commence from either:

- the date specified in the Agreement
- or
- 14 days after the date on which the Agreement was ratified.

The Director will write to the Medicare Australia CEO to notify him or her of the terms and ratification of the Agreement, and the date of effect. This notification will include any actions required for the Agreement to take effect (for example, removal of your authority to prescribe or dispense PBS medicines).

Final Determinations

Unless you have commenced court proceedings to challenge a decision of the PSR, the Final Determination will take effect 35 days after the day you receive a copy.⁴¹

The Determining Authority will give copies of the Final Determination and the date of effect to the Director and the Medicare Australia CEO.

You will be advised in writing of the date of effect. The Medicare Australia CEO will also be provided with a copy of the Final Committee Report received by the Determining Authority from the Committee.

Depending on the terms of the Final Determination you may be contacted by Medicare Australia in relation to the commencement of a disqualification period or the process to repay Medicare or PBS benefits.

Considering your appeal options

Should you disagree with the outcomes or process used in your matter you have the right to take the matter to the Federal Court.

Your legal representative or medical defence association will advise you on the steps of this process.

Further information on other avenues available to you is outlined on page 28.

⁴¹ Section 106V of the *Health Insurance Act 1973*

Notification to Medicare Participation Review Committees

If you have previously had one or more Final Determinations (or ratified section 92 Agreements), the Director must give the Chairperson of the Medicare Participation Review Committee (MPRC) a written notice setting out the details of all Final Determinations that have taken effect against you.⁴²

A copy of the written notice to the MPRC will be provided to you should this apply.

Further information on the MPRC and its process can be obtained by contacting Medicare Australia.

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STAGE 3 CHECKLIST

If your matter is a Negotiated Agreement the following steps will have occurred during stage three of the process:

- The Director will send you a copy of the documents sent to the Determining Authority*
- You, or your legal adviser, will be advised verbally of the decision of the Determining Authority on the day of the meeting.*
- The Determining Authority will send you a letter confirming its decision*
- Medicare Australia will contact you about any orders to repay Medicare Benefits, or serve a disqualification period, that was in the Agreement.*

If your matter went to a Committee the following steps will have occurred during stage three of the process:

- The Determining Authority will send you a letter inviting you to make a submission on the sanctions it should apply in light of the findings in the Committees Final Report*
- You may send the Determining Authority your submission*
- The Determining Authority will acknowledge and then consider your submission*
- The Determining Authority will send you a Draft Determination containing its draft decision, and invite you to make a submission*
- You may send the Determining Authority your submission*
- The Determining Authority will acknowledge and then consider your submission*
- The Determining Authority will send you its Final Determination and a letter advising that the sanctions within it will take effect in 35 days.*
- Medicare Australia will contact you about any orders to repay Medicare Benefits, or serve a disqualification period, that was within the Final Determination*

⁴² Section 106X of the Health Insurance Act 1973

