Patented Medicine Prices Review Board

Conseil d'examen du prix des médicaments brevetés

Patented Medicine Prices Review Board (PMPRB)

Fasken Martineau Pharmaceutical Law Seminar
April 29, 2010, Montréal

Canada

Overview

- **PMPRB Origin and Mandate**
- **Price Regulatory Framework**
- **Review of Excessive Price Guidelines**
- **Price Review Process**
  - Scientific Review Process
  - Price Tests

PMPRB Origin and Mandate

- **Independent, quasi-judicial body created by Parliament in 1987 through amendments to the *Patent Act***
  - Consumer protection pillar – balance extension of patent protection by ensuring non-excessive prices (other pillars: principles of intellectual property; relationship to industrial policy; Canada's multilateral relations; Health care of Canadians)
  - Remedial orders carry the force of Federal Court
  - Reduce price to non-excessive level
  - Offset excess revenues (via further price reduction or payment)
- **Dual mandate:**
  - **Regulatory:** To ensure that prices charged by patentees for patented medicines sold in Canada are not excessive
  - **Reporting:** To report on pharmaceutical trends of all medicines, and on research and development (R&D) spending by pharmaceutical patentees

Price Regulatory Framework

Patent Act

- Established PMPRB in 1987
- Set out factors to be considered by Board:
  1) Price of medicine sold in Canada
  2) Prices of other medicines in the same therapeutic class sold in Canada
  3) Prices of medicines sold in comparator countries
  4) Changes in CPI
  5) Other factors

Patented Medicines Regulations

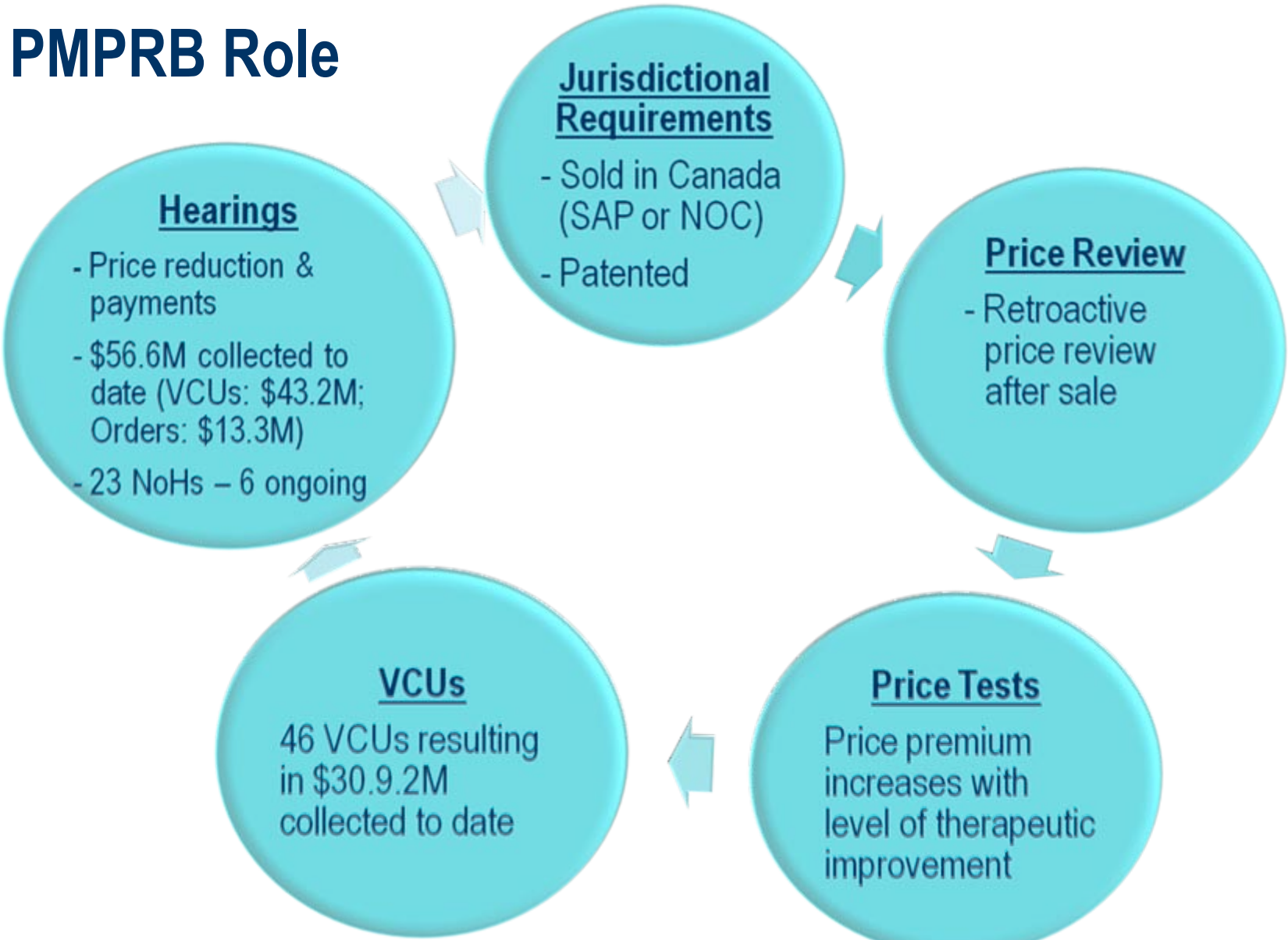
- Require patentees to file price and sales information for each class of customer in each Province/Territory
- Identify 7 comparator countries:

France, Germany, Italy, Sweden, Switzerland, United Kingdom, United States

Board's Guidelines

- Provide transparency and predictability for patentees on how prices reviewed
- Not binding on Board or patentees in a hearing

PMPRB Role


Jurisdictional Requirements
- Sold in Canada (SAP or NOC)
- Patented
Price Review
- Retroactive price review after sale
Price Tests
Price premium increases with level of therapeutic improvement
VCUs
46 VCUs resulting in $30.9.2M collected to date
Hearings
- Price reduction & payments
- $56.6M collected to date (VCUs: $43.2M; Orders: $13.3M)
- 23 NoHs – 6 ongoing

Reviewing Excessive Price Guidelines

- **Evolving pharmaceutical environment:**
  - Changing nature of drug pipeline
    - Trend towards incremental innovation
  - Price variability among customers/provinces
  - "Patented generics"
- **Board responsibility to ensure Guidelines remain relevant and appropriate:**
  - No major changes since 1994 revisions
  - Desire to uphold principles of fairness, transparency, and predictability

Consultation Process

- **Requirement to consult key stakeholders:**
  - s.96(5) of the *Patent Act* requires consultations with provinces / territories, consumer groups, and industry before issuing new or revised Guidelines
    - Discussion papers issued in 2005, 2006, and 2008; 6 working groups established; Bilateral and multilateral meetings/calls with: Industry (brand, biotech, generic); Federal/Provincial/Territorial governments; Consumer/patient groups; Third party payers; Regular updates via Board Communiqués and PMPRB NEWSletter ; Notice and Comment on Draft Revised Guidelines issued in August 2008 and March 2009; Final Compendium of Policies, Guidelines, and Procedures issued June 9, 2009

Key Changes to the Guidelines

- Introduction of new terminology
- Assessing therapeutic value
- Rewarding therapeutic innovation
- "Any Market" Review
- Recognizing benefits / DIP methodology
- Offset of Excess Revenues

Guidelines and Procedures

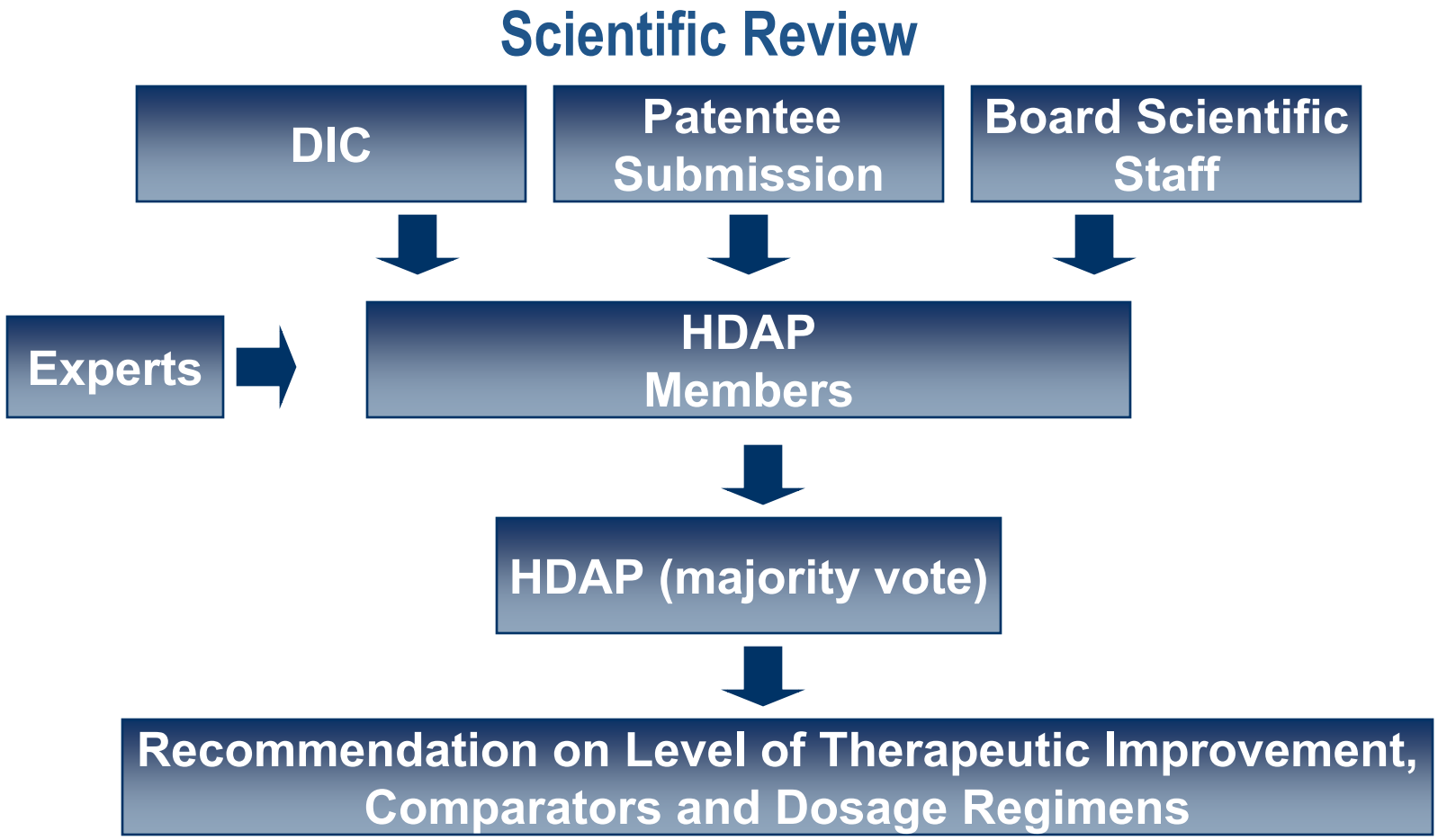
Key Terminology

- National Average Transaction Price (N-ATP)
- Market-Specific Average Transaction Price (MS-ATP)
- Maximum Average Potential Price (MAPP)
- National Non-Excessive Average Price (N-NEAP)
- Market-Specific Non-Excessive Average Price (MS-NEAP)

Submission Process for New Drug Products

- **Source of Scientific Information**
  - Patentee Submission
  - Research by Drug Information Center (DIC)
  - Research by Board Scientific Staff
  - Research by Human Drug Advisory Panel (HDAP) members
  - Other experts (as required)
  - Scientific review does not consider pricing information

Submission Process for New Drug Products



Products Not Referred to the HDAP

- In general, new patented drug products are referred to HDAP
- However, the following new patented drug products will not be referred to HDAP unless the patentee files a submission claiming therapeutic improvement:
  - The new patented drug product represents a new DIN of an existing dosage form of an existing drug product, or a new DIN of another dosage form of the existing drug product that is comparable to the existing dosage form as per Schedule 2 and has the same indication or use as the existing DIN; or
  - The new patented drug product is a combination drug product, the individual components of which are sold in Canada and have the same indication or use; or
  - The new patented generic drug product is considered by Health Canada to be bioequivalent to the reference brand drug product sold in Canada; or
  - The new patented generic drug product is a licensed version of an existing brand drug product sold in Canada.

Determining the Primary Indication/Use

- Guidelines did not change;
- Primary indication/use for drug products with multiple indications/use will be based on the approved indication or use for which the drug product offers the greatest therapeutic advantage in relation to alternative therapies;
- Where there is no apparent single approved indication or use for which the new patented drug product offers the greatest therapeutic advantage, the approved indication or use representing, potentially, the greatest proportion of sales will be the basis for recommending its level of therapeutic improvement; and selection of drug products to be used for comparison purposes;

Level of Therapeutic Improvement

- Breakthrough: A breakthrough drug product is the first one to be sold in Canada that treats effectively a particular illness or addresses effectively a particular indication.
- Substantial Improvement: A drug product offering substantial improvement is one that, relative to other drug products sold in Canada, provides substantial improvement in therapeutic effects.
- Moderate Improvement: A drug product offering moderate improvement is one that, relative to other drug products sold in Canada, provides moderate improvement in therapeutic effects.
- Slight or No Improvement: A drug product offering slight or no improvement is one that, relative to other drug products sold in Canada, provides slight or no improvement in therapeutic effects.

Factors Considered in Recommending the Level of Therapeutic Improvement

- **Primary Factors**
  - Increased efficacy
  - Reduction in incidence or grade of important adverse reactions
- The primary factors will be given the greatest weight. Primary factors will be considered in order to assess if the new patented drug product is a breakthrough, or represents substantial, moderate or slight/no improvement relative to other drug products available in Canada

Factors Considered in Recommending the Level of Therapeutic Improvement

- **Secondary Factors**
  - Route of administration
  - Patient convenience
  - Compliance improvements leading to improved therapeutic efficacy
  - Caregiver convenience
  - Time required to achieve the optimal therapeutic effect
  - Duration of the usual treatment course
  - Success rate
  - Percentage of affected population treated effectively
  - Disability avoidance/savings

- Note: factors such as the mechanism of action; a new chemical entity and a different pharmacokinetic profile will generally not be taken into consideration, unless the impact of these factors results in either increased efficacy and/or a reduction in the incidence or grade of important adverse reactions.

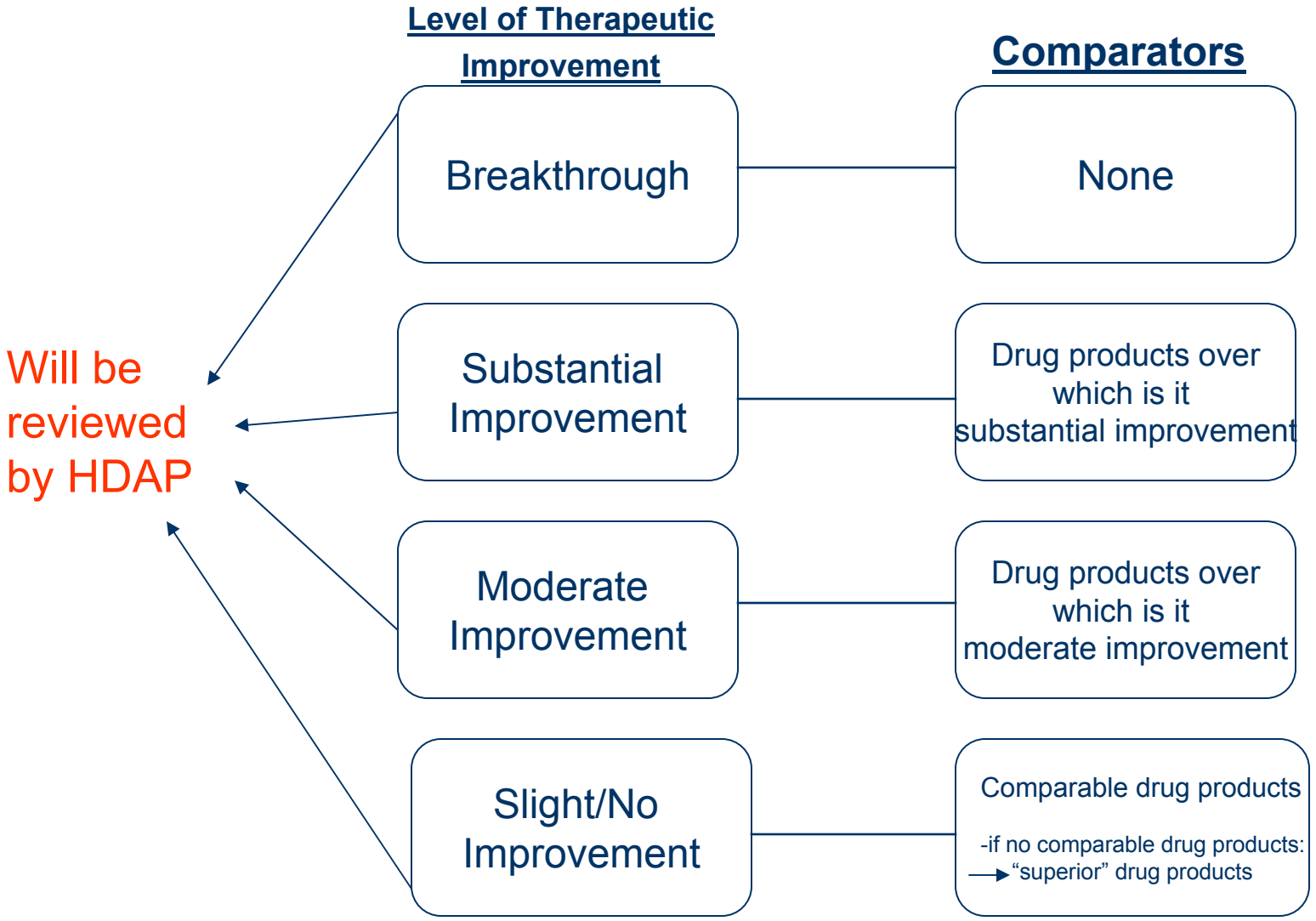
Methodology for the Evaluation of the Level of Therapeutic Improvement

- An evidence-based approach will be used
- Hierarchy of evidence from the Oxford Centre for Evidence-Based Medicine (see Schedule 1 in the Compendium)

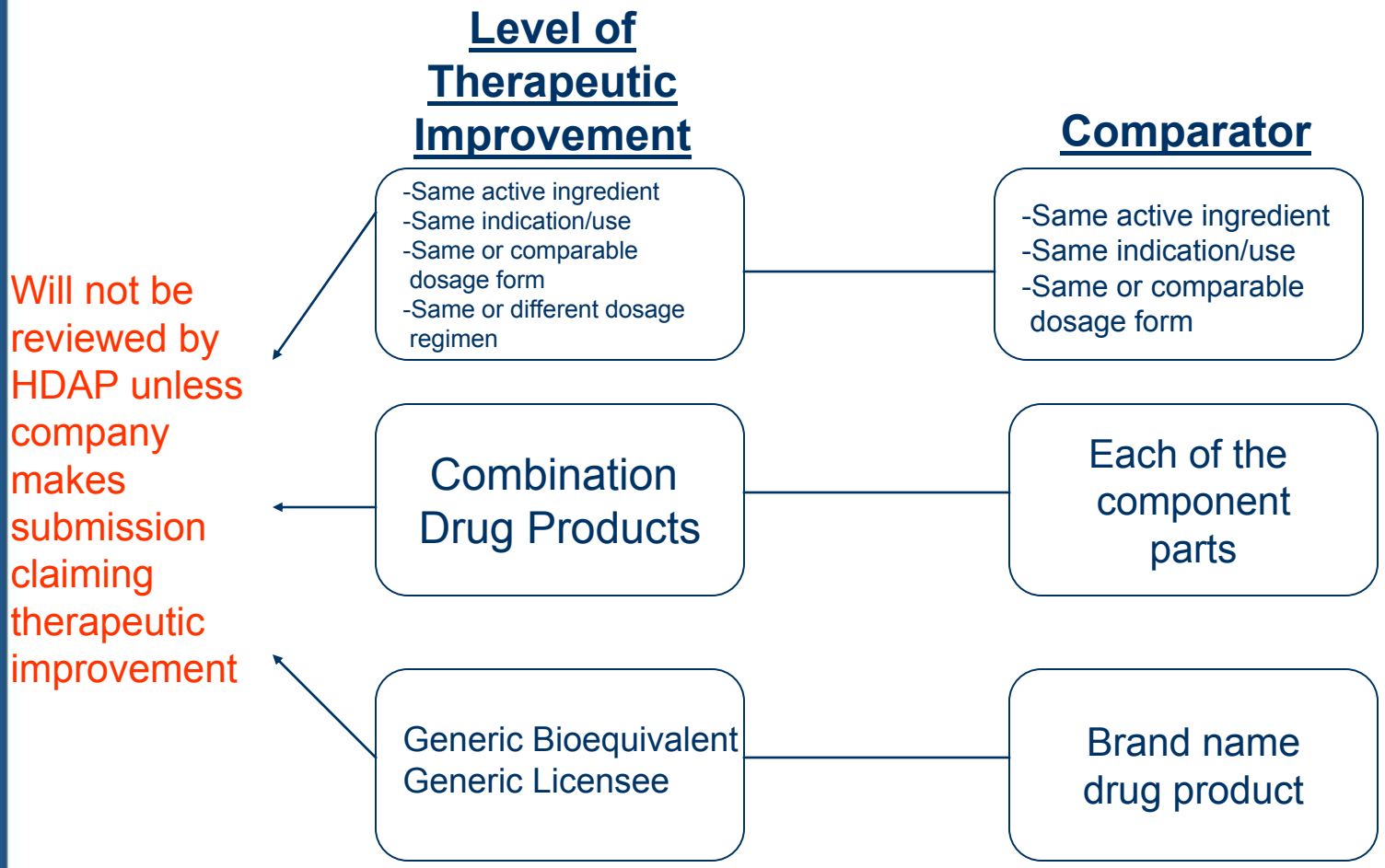
Selection of Comparators

- HDAP uses the World Health Organization (WHO) Collaborating Centre for Drug Statistics Methodology's Anatomical Therapeutic Chemical (ATC) Classification System
- Products will typically be those identified at the 4th sub-class level
- HDAP may also choose from the next higher sub-class or another sub-class

Selection of Comparators



Selection of Comparators



Comparable Dosage Regimens

- Guidelines did not change
- Will normally not be higher than the maximum of the usual recommended dosage in the Product Monograph
- The most appropriate strength of the drug product will be chosen for a particular dosage regimen
- Course of treatment will be applicable to acute indications
- A per-day regimen (based on maintenance dose) will be applicable to chronic situations

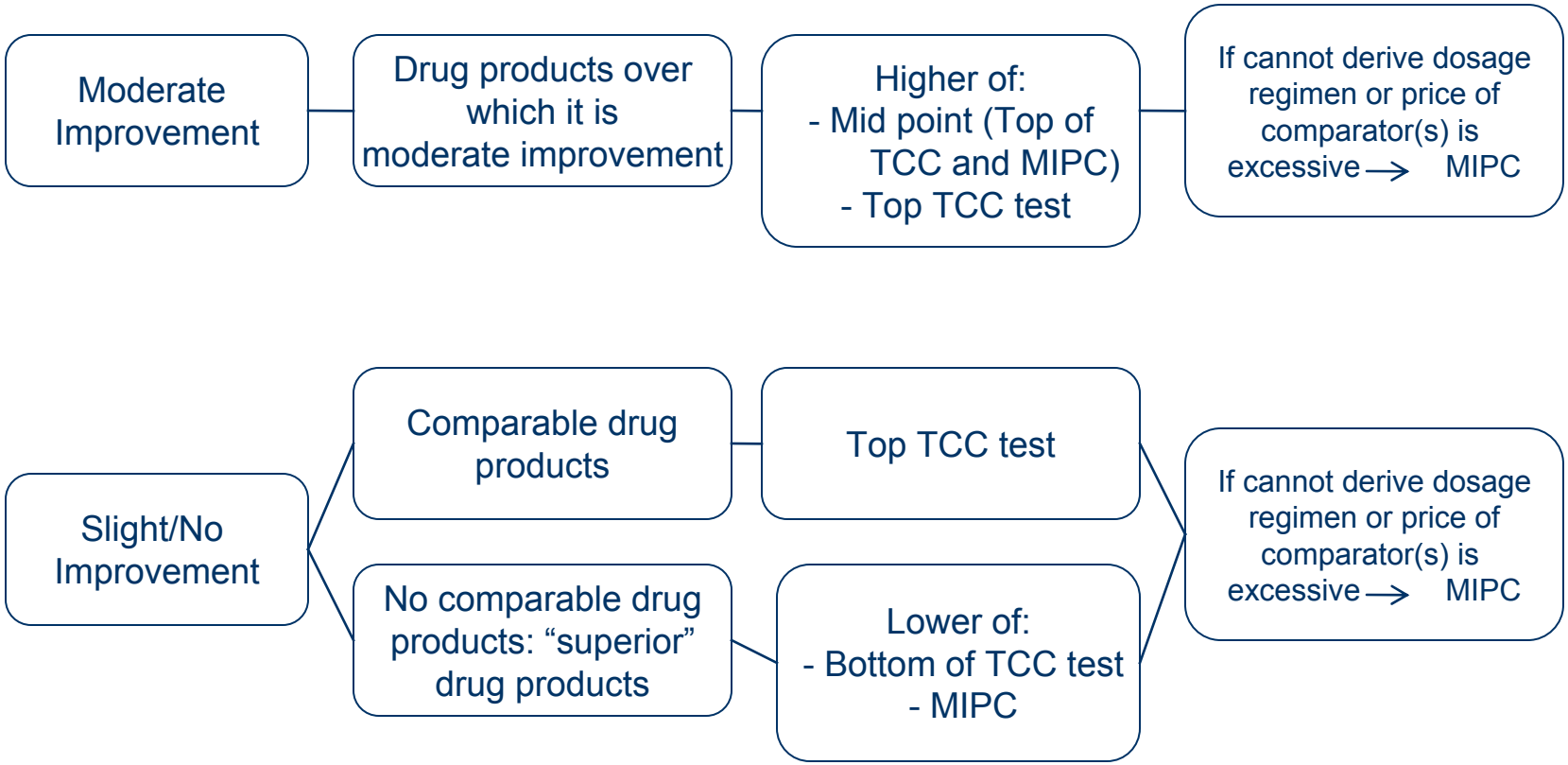
OTC and Veterinary Drug Products

- Upon receipt of a complaint, the PMPRB will undertake the scientific review of the patented OTC or veterinary drug product in the same manner as is undertaken for all other patented drug products

Introductory Price Tests

Level of Therapeutic Improvement	Drugs used for comparison purposes	Introductory Price Tests
Breakthrough	None	Median Int'l Price Comparison (MIPC)
Substantial Improvement	Drug products over which it is substantial improvement	Higher of: - Top of TCC test - MIPC

Introductory Price Tests



Introductory Price Test

Slight or no Improvement	Drugs used for comparison purposes	Intro Price Test
New presentation of existing drug product(s)	-Same active ingredient -Same indication/use -Same or comparable dosage form - Regardless of dosage regimen	-RR test if same dosage regimen -TCC test if different dosage regimen
Combination Drug Products	Component parts	TCC test (sum of component parts)
Bioequivalent Generic Licensee Generic	Brand name drug product	TCC test

Public Price Sources

- Six price sources will be consulted:
  - *Association québécoise des pharmaciens propriétaires* (AQPP)
  - IMS Health: Drug Store and Hospital Purchases published in June and December every year (not the Regional Report)
  - McKesson Canada: 10 volumes (1 per province) published in January and July each year
  - Ontario Drug Benefit (ODB) Programs;
  - PPS Pharma; and,
  - *Régie de l'assurance maladie du Québec* (RAMQ)

Highest International Price Comparison (HIPC) Test

- For all patentees, HIPC test conducted:
  - At national level
  - For pharmacy and hospital customer classes
  - For each province and territory
- HIPC test not applied to wholesaler class of customer

Existing drug products

- **Price increases do not exceed:**
  - the Consumer Price Index (CPI) – as per the Board's methodology; and
  - the HIPC

Investigation Criteria

- N-ATP or any MS-ATP of a new patented drug product exceeds MAPP during introductory period by more than 5%
- N-ATP of an existing patented drug product exceeds N-NEAP by more than 5%
- Excess revenues (calculated at national level) for a new or existing patented drug product are $50,000 or more

Resolution of Investigation

- Closure – price within the Guidelines
- Voluntary Compliance Undertaking (VCU) – by patentee to reduce the price and offset excess revenues
- Public hearing to determine whether the price is excessive and remedial order

Recent Decisions

- **Board Panel**
  - Quadracel and Pentacel (PMPRB-07-D5-QUADRACEL and PENTACEL)
  - Nicoderm (PMPRB-99-D10-NICODERM)

- **Federal Court & Federal Court of Appeal**
  - Pfizer (2009 FC 719)
  - Celgene (2009 FC 271, set aside & JR dismissed 2009 FCA 378, SCC granted leave to appeal April 22, 2010)