



# Hospital Appeal Board

Fourth Floor 747 Fort Street  
Victoria British Columbia  
V8W 3E9  
**Telephone:** (250) 387-3464  
**Facsimile:** (250) 356-9923

Mailing Address:  
PO Box 9425 Stn Prov Govt  
Victoria BC V8W 9V1

Website: [www.hab.gov.ca](http://www.hab.gov.ca)  
E-mail: [hab@gov.bc.ca](mailto:hab@gov.bc.ca)

**NOTE: This is not the original version of this decision. It is a revised version that has been edited for public disclosure to protect confidential and third party personal information in accordance with the Hospital Appeal Board's Decision Publication Policy.**

## **DECISION NO. 2015-HA-002(f)**

In the matter of an appeal under section 46 of the *Hospital Act*, R.S.B.C. 1996, c. 200

### **BETWEEN:**

Dr. David Kates

**APPELLANT**

### **AND:**

Interior Health Authority

**RESPONDENT**

### **PANEL:**

Cheryl L. Vickers, Panel Chair  
Stacy F. Robertson, Vice-Chair  
Charles (Rick) Riley, Member

## **ORDER DISMISSING APPEAL**

WHEREAS Dr. David Kates, the Appellant, filed an appeal to the Hospital Appeal Board on September 16, 2015 regarding the July 6, 2015 decision of the Board of Directors, Interior Health Authority, revoking or, alternatively, refusing to renew the Appellant's appointment to practice at Kelowna General Hospital or anywhere within the Interior Health Authority;

AND HAVING BEEN ADVISED by the Appellant that he wishes to withdraw his appeal;

AND HAVING BEEN FURTHER ADVISED that the Appellant and the Respondent Interior Health Authority have reached consensus on terms and conditions for resolving the matters under appeal;

AND HAVING BEEN jointly requested by the parties to make an order under Rule 6(2)(e) of the Hospital Appeal Board Rules of Practice and Procedure that includes the terms of the settlement;

NOW THEREFORE THE BOARD HEREBY makes an Order pursuant to section 17(1) and (2) of the *Administrative Tribunals Act*, S.B.C. 2004, Chapter 45, dismissing the appeal on the following terms and conditions:

1. The Appellant will be appointed to the Provisional Medical Staff in the Nephrology Division, of the Department of Medicine, at Kelowna General Hospital, Interior Health Authority as of January 1, 2017.
2. The Appellant will be eligible for consideration for Active Medical Staff privileges in the normal annual review process, after completion of six months and by no later than two years after January 1, 2017.
3. Prior to the Appellant's return to work, he will:
  - (a) acknowledge past wrongs, including that he has engaged in disruptive and disrespectful behaviour, and engage in a facilitation process conducted by an expert to be mutually agreed upon by both parties for the purposes of discussing a healthy reintegration for the Appellant with staff and physicians prepared to engage in the process. Costs of the facilitation process will be paid by the Respondent;
  - (b) agree to a confidential letter of agreement for physician behavior, the contents of which have been agreed upon between the Respondent and the Appellant;
  - (c) engage in educational or practice experience to ensure currency as per the Provincial Privileging Dictionary, which will include:
    - i. consultation with the Respondent regarding the skills, experiences, procedures and services to be completed during the preceptorship at McGill currently arranged for January 2017,
    - ii. approval of the list of skills, experiences, and procedures as reasonably determined by the Head of the Renal Program of KGH;
    - iii. engagement of the Respondent with McGill in the list of skills, experiences, and procedures to be covered in the preceptorship with McGill, and
    - iv. delivery of a confidential report regarding the skills, experiences, procedures and services performed by the Appellant from the preceptor to the Respondent and the Appellant.

The Respondent will provide reasonable assistance and support (not including financial support) to the Appellant in meeting the Provincial Privileging Dictionary requirements, including required documentation for the preceptorship and any other currency requirements;

- (d) provide a current certificate of professional conduct from the College of Physicians and Surgeons of BC;

4. The Appellant will be allocated an equivalent of 0.5 FTE (based on current allocation, this is equivalent to approximately 8 weeks of dialysis and 8 weeks of clinics per year) from reinstatement until the normal privileging period, commencing in 2019, with the allocation of time being reviewed in 2019 for consideration of progression to 1.0 FTE;

5. Prior to his return to work, the Appellant will work with the KGH Nephrology Division to:

(a) determine an appropriate gradual return to work schedule;

(b) determine a work and call schedule, in accordance with 5(a), which:

(i) does not have the Appellant doing on-call (inpatient and dialysis coverage) at the same time as doing clinic work or office work, for example, one week of inpatient, dialysis, and on-call coverage, one week of clinics, and then time away (a week or more) to do office practice,

(ii) does not take a share of Dr. L's current inpatient, dialysis or clinic work,

the ultimate schedule being subject to approval by the Director of the KGH Nephrology Division, not to be unreasonably withheld.

6. During the course of the Appellant's provisional privileges and until 2019, or until such earlier time as determined solely by the Respondent:

(a) the Respondent will be entitled to engage in random chart reviews of the Appellant's care every 3 to 6 months by an external nephrologist to be agreed upon by the parties;

(b) The Appellant will select a mentor;

(c) The parties will agree upon an appropriate monitor. The monitor will be available to receive concerns from staff and physicians in relation to the Appellant's behaviour and care. The monitor shall promptly notify the Appellant (within 48 hours, if possible) of any such concerns and assist in resolution;

(d) The Appellant will participate in an external monitoring program, to be mutually agreed by the parties, which will include a comprehensive 360 review, at his expense;

(e) The Appellant will continue treatment in accordance with the instructions of his care team and will have Dr. S and Dr. C provide a written confirmation every six months that the Appellant continues to be cleared for work; and

(f) The Appellant will meet with the monitor, KGH Chief of Staff and Nephrology Division Head on a quarterly basis to review this arrangement and his progress in achieving behavioral change. The Chief of Staff will gather feedback from staff and physicians prior to these meetings and provide that feedback to the Appellant at the meetings.

7. Any future complaints about the Appellant's behaviour or care will be handled under IHA's Medical Staff Bylaws, Rules and policies and the Appellant acknowledges that it is open to HAMAC and the Board to consider this agreement and the Appellant's past behaviour in such process.

8. The Appellant will release the Respondent from all claims with respect to his leave of absence and this Appeal, including the Human Rights Complaint filed with the British Columbia Human Rights Tribunal (the "Complaint"). The Appellant will give irrevocable instructions to his counsel to withdraw the Complaint and will provide a comprehensive release to the Respondent, the language of which to be mutually agreed by the parties.

9. Each party will bear their own costs.

10. The parties may return to the Chair or the Hospital Appeal Board for clarification on implementation of this Order.

Dated this 5<sup>th</sup> day of December, 2016.

"Cheryl Vickers"

Cheryl L. Vickers, Panel Chair  
Hospital Appeal Board

"Stacy Robertson"

Stacy Frank Robertson, Vice-Chair  
Hospital Appeal Board

"Rick Riley"

Charles (Rick) Riley, Member  
Hospital Appeal Board