



HOSPITAL APPEAL BOARD

Hospital Act
(s. 46 R.S.B.C 1996, Chapter 200)

Rules Of Practice And Procedure

Administrative Tribunals Act
(s.11 S.B.C. 2004, chapter 45)

Effective May 20, 2005

PREAMBLE

The Hospital Appeal Board (the "board") is established under section 46(1) of the *Hospital Act*, R.S.B.C. 1996 c. 200, (the "Act"). The board is a quasi-judicial tribunal with statutory authority to hear appeals from administrative decisions respecting a practitioner's permit to practise in a hospital.

Appeals to the board are governed by section 46 and 46.1 of the Act, which incorporate certain provisions of the *Administrative Tribunals Act*, S.B.C. 2004, c.45 (the "ATA"). Section 11(1) of the ATA gives the board power to make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it. Pursuant to this authority, the following rules of practice and procedure are made.

Rule 1 – GENERAL

Definitions

- (1) Terms used in these Rules are as defined in the Act, the Hospital Regulation or the ATA, unless otherwise stated in these Rules.
- (2) For the purpose of these Rules

"address of record" means a current postal address in British Columbia contained in the notice of appeal or response, and may include a fax address in British Columbia.

“application” means a request for an order from the board.

“business day” means 8:30 am to 4:30 pm Monday through Friday, excluding holidays.

“appeal” means an appeal filed under section 46 of the Act.

“appellant” means a practitioner who files a notice of appeal under the Act and these Rules.

“board chair” means the member designated as chair under s. 46(4)(a) of the Act.

“document” includes a paper, correspondence, form, memoranda, book, photograph, film, map, graph, drawing, chart, x-ray, book of account, recording of sound, any record of a permanent or semi-permanent character and any information recorded or stored by means of any device, that is relevant to the proceedings.

“file” means effective delivery of a communication to the board under these Rules and its receipt by the board.

“hearing” means an oral, electronic or written hearing as follows:

- a) “oral hearing” means a hearing involving the parties or their representatives attending in person before a panel;
- b) “electronic hearing” means a hearing held by conference telephone or videoconference; and
- c) “written hearing” means a hearing held by means of exchange of documents.

“member” includes:

- a) the chair of the board;
- b) the vice chair of the board;
- c) a member of the board;
- d) the member designated as panel chair; or
- e) a panel of members.

“panel” means one or more members designated to hear an appeal.

“panel chair” means the chairperson of the panel designated to hear an appeal.

“party” means an appellant or a respondent.

“record” means all documentation, including hospital committee reports referred to in that documentation, that was before a board of management when the decision was made.

“registrar” means the person on the board’s staff that has been designated as the registrar to carry out powers, functions and duties of the board.

“representative” means legal counsel or an agent who is authorized to represent a person in the proceeding.

“respondent” means a board of management as defined in the *Hospital Act*.

“service” means the effective delivery of a document to the party, representative or other person required to be served under the legislation or these Rules.

Computing Time (Deadlines)

- (3) Subject to Rule 1(4), in computing time periods under these Rules or an order of the board,
 - a) where there is a reference to a number of days between two events, they will be construed by excluding the day on which the first event happens even where the words “at least” are used;
 - b) where a period of less than seven days is prescribed, Saturdays, Sundays and statutory holidays will not be counted;
 - c) where the time for doing an act under these Rules expires on a non-business day, the act may be done on the next day that is a business day; and
 - d) where under these Rules, a document would be deemed to be received or service effective on a non-business day, it will be deemed to be received or effective on the next day which is a business day.

- (4) The board may abridge or extend any time limits in these Rules, whether before or after the time limit has expired, as the board considers fair and appropriate in the circumstances.

Filing of Documents

- (5) The appellant and the respondent must each provide to the board written notice of their address of record for purposes of service or delivery of notices, documents and orders.
- (6) If a party's address of record changes, the party must immediately file a notice of the change and deliver a copy of the notice of change to all other parties.
- (7) All communications with the board, other than filing of the notice of appeal under section 46(3.3) of the Act, are to be made to the attention of the registrar, unless otherwise ordered by the board.
- (8) When filing any documents with the board a party must deliver three (3) copies of each document, unless otherwise directed by the board.
- (9) The board may determine that no further action is required under a Rule on the basis that there has been substantial compliance with a required form or notice.

Rule 2 - COMMENCING AN APPEAL

Notice of Appeal

- (1) An appellant may commence an appeal by delivering written notice of an appeal containing the information required under section 46(3.3) of the Act to:

The Chair
Hospital Appeal Board
Fourth Floor- 747 Fort Street
Victoria BC V8W 3E9
Fax: 250-356-9923

- (2) After receiving a notice of appeal that is in compliance with the Act and these Rules, the board will:
 - a) notify the appellant of the receipt, and
 - b) provide a copy of the notice of appeal and any documents included with it to the administrator of the respondent with a request for a response.

Response

- (3) Within 30 days after receiving a copy of the notice of appeal, the respondent must file with the board, and serve on the appellant:
 - a) a written response to the appeal;
 - b) a copy of the decision of the board of management under appeal and the record relating to that decision; and
 - c) a statement whether the respondent waives an oral hearing of the appeal.
- (4) The respondent must serve its response on the appellant at the same time it is delivered to the board under Rule 2(3).

Rule 3 – FILING AND DELIVERY OF DOCUMENTS

Service of Documents

- (1) In this Rule, “document”, includes any formal document, correspondence or other thing that is, or is required to be, served or delivered.
- (2) A party required to serve or deliver a document to another party must do so by one of the following means:
 - a) personal delivery;
 - b) regular, registered or certified mail to the party’s address of record;
 - c) fax transmission to the last known fax number of the party, but only if the document, inclusive of the cover sheet, does not exceed 30 pages, or where longer, if the receiving person consents;

- d) courier, including Priority Post, to a party's address of record;
or
 - e) any other means authorized or permitted by the board.
- (3) A document that is served or filed by fax must include a cover page with sufficient information to identify the sender, recipient, number of pages sent, date and time of transmission and a telephone number to call in case of transmission problems.
- (4) If it is impractical to serve or deliver documents in accordance with Rule 3(2), the board may give such directions for substituted service or delivery, as it considers appropriate and, where necessary, may dispense with service or delivery.
- (5) A party delivering documents to the board must do so:
- a) to the address or fax number described in Rule 2(1); and
 - b) by one of the methods described in Rule 3(2).
- (6) A party who delivers a document to the board must also send copies to all other parties, except where a party makes an *ex parte* application, including an application under Rule 11(2).
- (7) Service or delivery is deemed to take place on the date of actual delivery, except as follows:
- a) where service or delivery is by personal delivery, mail, fax or courier, and is not effected before 4:30 p.m. on a business day, the date of service or delivery is deemed to be 9:30 a.m. on the next business day;
 - b) where any other means is authorized or permitted by the board, on the date and time, or deemed date and time, specified in the board's direction.

Rule 4 –PRE-HEARING MATTERS

Disclosure of Documents

- (1) Each party is required to disclose to the other party, as soon as practicable, all documents in that party's possession or control relating to the matters in question in the appeal.

- (2) A party's obligation to disclose documents under this Rule is satisfied by disclosing to the other party a descriptive list of documents in accordance with the content of Form 1 of these Rules.
- (3) Where a party has delivered a list of documents under Rule 4 (2), that party must:
 - a) allow the other party to inspect those documents respecting which there is no objection to production, during regular business hours and copy them at that other party's expense, or
 - b) on request of the other party, deliver copies of any of the documents, if reproducible, on payment in advance of the costs of reproduction and delivery.
- (4) A schedule for the timely disclosure of documents will be determined during the pre-hearing conference under Rule 5 if the parties cannot otherwise agree.
- (5) The board may, on application, order a party to disclose further documents in relation to an appeal if a party satisfies the board that further disclosure is just and appropriate in the circumstances of the appeal.
- (6) For greater certainty, nothing in this Rule limits the board's powers to order a party to produce or exchange documents or copies of documents to any other party at such time, under such conditions and in accordance with any schedule established by the board.

Applications

- (7) Notice is required for any pre-hearing applications, including but not limited to applications involving the following matters:
 - a) jurisdiction of the board;
 - b) summary dismissal;
 - c) requests for a stay of the proceedings or the decision under appeal;
 - d) disclosure of particulars, documents or objects;
 - e) standing or party or intervener status; and
 - f) evidentiary issues.

- (8) The notice required in Rule 4(7) must be filed with the board and be served on the other parties to the proceeding, by the party making the application.
- (9) Notice of a pre-hearing application does not need to be in any particular form, but must be in writing, must set out the grounds for the application and the relief requested, and must be accompanied by any evidence to be relied upon.
- (10) A party who wishes to respond to an application must file and serve a response, accompanied by any evidence to be relied upon, within 14 days of service of the notice, or such other time directed by the board.

Rule 5 - PRE-HEARING CONFERENCES

Direction To Attend

- (1) The board may give written notice directing the parties or their representatives to attend one or more pre-hearing conferences for the purpose of considering any matter including:
 - a) identification of parties and other interested persons and the scope of their participation at the hearing;
 - b) issues relating to document disclosure;
 - c) process and timing for the exchange of documents and witness lists;
 - d) identification and simplification of issues;
 - e) identification of preliminary motions or applications;
 - f) procedural issues, including the dates by which any steps in the proceeding are to be taken, the estimated duration of the hearing and the date that the hearing will begin;
 - g) identification of facts or evidence that may be agreed upon;
 - h) identification of documents upon which each party intends to rely at the hearing;
 - i) issues regarding requirements for prior notice of expert opinion evidence at the hearing;

- j) the possibility of settlement and whether the parties have an interest in participating in a settlement conference; and
 - k) any other matter that may assist in the just and most expeditious disposition of the proceeding.
- (2) A pre-hearing conference may be held in person or by telephone or videoconference.
- (3) The pre-hearing conference may be chaired by a board member or staff of the board.
- (4) A pre-hearing conference conducted by board staff will be limited to procedural and administrative matters that can be resolved by way of agreements and undertakings on consent of the parties and which will not require the board to issue an order or directive.
- (5) If a board member conducts a pre-hearing conference, the member may issue procedural orders or directions determining any of the matters that may be considered in a pre-hearing conference.

Preparation For Conference

- (6) The board may direct the parties to file documents or submissions prior to the pre-hearing conference.

Orders, Agreements And Undertakings

- (7) Orders, directions, agreements and undertakings made at a pre-hearing conference will be recorded in a memorandum prepared by or under the direction of the member or person presiding at the pre-hearing conference which will be provided to those persons who attended the pre-hearing conference and to the member presiding at the hearing and to such other persons as the member or person presiding at the pre-hearing conference directs.

Rule 6 - WITHDRAWING AN APPEAL

- (1) An appellant may withdraw all or part of an appeal by giving written notice to the other party and to the board.
- (2) The notice must:
 - a) identify the proceeding to be withdrawn;
 - b) identify the parties to the proceeding;
 - c) state that the appellant wishes to withdraw all or part of the appeal;
 - d) be signed by the appellant or representative; and
 - e) where the withdrawal is a result of settlement of all or part of the appeal,
 - (i) indicate whether the parties wish to request an order from the board that includes the terms of settlement, and
 - (ii) where the parties wish to request an order under Rule 6(2)(e)(i), provide particulars of the terms of settlement requested to be included in the order.

Rule 7 – NOTICE OF HEARING

- (1) Written notice of a hearing specifying the date, time and place of hearing will be given by the board to the parties and other persons as required by statute and to such other persons as the board considers necessary.
- (2) The board may include in a notice of hearing any other information or directions it considers necessary for the proper conduct of the hearing.

Rule 8 – WRITTEN HEARINGS

- (1) If the parties have waived an oral hearing of an appeal or application, the board may hold any combination of written, oral or electronic hearings. In determining the manner of hearing, the board may consider any relevant factors, including:

- a) the suitability of a written hearing format considering the subject matter of the hearing;
- b) the interests of the parties or the public interest;
- c) whether the nature of evidence is appropriate for a written hearing, including whether credibility is an issue and the extent to which the facts are in dispute;
- d) the extent to which the matters in dispute are questions of law;
- e) the convenience of the parties, including any anticipated prejudice to a party;
- f) the cost, efficiency and timeliness of proceedings;
- g) avoidance of unnecessary length or delay of the hearing;
- h) ensuring a fair and understandable process; and
- i) the fulfillment of the board's statutory mandate.

Rule 9 - ADJOURNMENTS

- (1) Adjournment requests must be made as early as practicable prior to the date set for the hearing.
- (2) The adjournment request must be made in writing, copied to all other parties and must include the following:
 - a) an indication of whether the other parties have been canvassed as to their position on the adjournment request, and if not, why not;
 - b) reasons for the request;
 - c) the amount of time needed for the adjournment; and
 - d) available replacement dates.
- (3) In granting an adjournment the board may impose conditions.

Rule 10 – EVIDENCE

Agreed Facts

- (1) The parties may file an agreed statement of facts, which will be determinative of those facts for purposes of the appeal.

Photocopies

- (2) To reduce unnecessary duplication of legal authorities and other documents, the parties should endeavour to provide a joint book of documents and legal authorities to the board, wherever possible.
- (3) Any person tendering a document as evidence in a hearing must:
 - a) file the original, or a copy, for the board record, which will be marked as the official exhibit; and
 - b) provide one copy for each panel member at the hearing and one copy for each party.
- (4) Where an original document has been filed in evidence at a hearing, the board may permit the original to be replaced by a copy.
- (5) When a party presents written submissions at a hearing, the party must provide three copies of the submission for the panel, and one copy for each other party.

Evidence and Testimony of Experts

- (6) A written statement setting out the opinion of an expert is admissible at a hearing, without proof of the expert's signature, if a copy of the statement is furnished to every other party and the board at least 30 days before the statement is tendered in evidence.
- (7) An expert may give oral opinion evidence if a written statement of the opinion has been delivered to every other party and the board at least 30 days before the expert testifies.
- (8) The statement shall set out or be accompanied by a supplementary statement setting out the following:
 - a) the qualifications of the expert;
 - b) the facts and assumptions on which the opinion is based;
 - c) the name of the person primarily responsible for the content of the statement.
- (9) The assertion of qualifications of an expert is prima facie proof of them.

(10) If a statement that does not conform to rule 10(8) has been delivered

- a) it is inadmissible under rule 10(6), and
- b) the testimony of the witness under rule 10(7) is inadmissible,

unless the board otherwise orders.

(11) A party to whom a statement has been delivered under rule 10(6) may, by written notice to that party within 10 days after receiving the statement, require the attendance of the expert at the hearing for cross-examination.

(12) A party who receives a written statement under rule 10(6) or (7) shall notify, within 10 days, the party delivering the statement of any objection to the admissibility of the evidence and the grounds for the objection that the party receiving the statement intends to raise at the hearing.

(13) Before or at a hearing, the board may, extend or abridge the time limits pertaining to expert evidence.

Section 51 Evidence Act

(14) The report of any committee within the scope of s. 51 of the *Evidence Act* that is relevant to the appeal must be delivered to the appellant, and to the board as part of the record, no later than 30 days after the notice of appeal is delivered to the respondent.

(15) The board may extend the period in Rule 10(14) where the board is satisfied that there is good reason for an extension.

(16) The party to whom a report has been delivered under Rule 10(14) may, by written notice within 10 days after receiving the report, require the respondent to produce a witness to be cross-examined in relation to the report.

(17) The respondent is obliged to produce only one witness in relation to a report unless the board orders otherwise.

- (18) If one or more authors of a report under section 51 is required to attend for cross-examination and the hearing panel determines that cross-examination was not of assistance in respect of one or more authors, the board may order the party who required the attendance of the author to pay, as costs, a sum the board considers appropriate.

Rule 11 –WITNESSES

Oath or Affirmation

- (1) The board will require oral testimony to be given under oath or affirmation.

Summons To A Witness

- (2) A party may request the board to make an order requiring a person to attend a hearing to give evidence or produce a document or thing, by making a written request to the registrar.
- (3) Alternatively, a party may issue a summons requiring a witness to attend a hearing or produce a document or thing, by:
- a) completing a summons to witness in Form 2;
 - b) serving a copy of the summons on the witness at least 7 days before the date the witness is required to attend; and
 - c) providing the witness reasonable estimated traveling costs.

Application to Set Aside a Summons Issued by a Party

- (4) A person who is served with a summons to appear at a hearing by a party may apply to the board in writing before the hearing, or in person at the hearing, for the summons to be set aside.
- (5) The board may set aside a summons issued by a party if it is satisfied that:
- a) the evidence of the person is not relevant;

- b) the evidence may be obtained through some other means;
 - c) the evidence is protected by solicitor-client privilege;
 - d) the person is not able to provide the evidence sought; or
 - e) the attendance of the person will be unduly inconvenient.
- (6) Where the board sets aside a summons to witness it may make any other order that the board thinks is fair, including an order changing the date of the witness's appearance at the hearing.

Rule 12 –CONDUCT OF HEARINGS

Hearings Closed to the Public

- (1) Unless otherwise ordered by the board, hearings before the board are not open to the public.

Court Reporters

- (2) The board will provide for the recording of all hearings before the board by a qualified verbatim reporter.
- (3) If any party wishes to have a court reporter attend any application or preliminary matter prior to the hearing, the party requesting the recording is obliged to provide and pay for such reporting by a court reporter approved by the board.

Order of Presentation of Evidence

- (4) Evidence at a hearing will be presented by the parties in the following order, unless otherwise directed by the board:
- a) the respondent;
 - b) the appellant; and
 - c) reply evidence, where the board decides this is appropriate.

Submissions

- (5) The parties will be entitled to make submissions in the same order in which they presented their evidence, unless otherwise directed by the board.
- (6) The board may order the parties to make written submissions on any issue and may give directions as to the form and timing of such written arguments.

Rule 13 – DECISIONS

- (1) The board will send a copy of its decision, including the full reasons to all parties. Subsequently, the board will post a copy of its decision on the board's website and will make copies available to the public on request, from the board's registry office.
- (2) The version of the board's decisions that are made accessible to the public will be disclosed in a manner that protects the reasonable privacy interests of third parties.

Schedule A

Form 1 – List of Documents of a Party

Form 2 – Summons to a Witness