



HOSPITAL APPEAL BOARD

Decision Publication Policy

Effective October 1, 2007

Introduction

There are compelling reasons for making any administrative tribunal's body of jurisprudence available for public inspection. Public availability of board decisions furthers the interests of openness and transparency regarding a public body that exercises statutory power. It also helps to educate potential parties about a board's process, and about the principles that govern its decision-making. The Hospital Appeal Board ("the board") is committed to this principle of public accountability.

The board hears appeals by practitioners of decisions of a board of management regarding permits to practice in a hospital. Hearings before the board are not open to the public. Disclosure of personal information through the public release of information contained in reasons for decisions requires a delicate balancing between the principle of public accountability and respecting individuals' right to privacy, which must be resolved without compromising the integrity of the reasons themselves. The board is sensitive to privacy issues in general and is committed to respecting the privacy of identifiable patients and others whose personal information may be contained in the decisions but who are not necessarily parties to the proceedings.

This policy describes how the board will balance public accountability with personal privacy in the public release of its reasons for decision.

Legal Requirements of Disclosure

Legal requirements of disclosure that are applicable to the board are provided in the *Administrative Tribunals Act*, S.B.C 2004, c.45, the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, and the *Evidence Act*, R.S.B.C. 1996, c. 124.

Section 50(4) of the *Administrative Tribunals Act* (ATA) requires that the board make its decisions available to the public.

Section 22 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) prohibits the disclosure of personal information, which is defined as “recorded information about an identifiable individual”.

Section 22(3)(a) states that the disclosure of personal information is “presumed to be an unreasonable invasion of a third party’s personal privacy if the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation”.

Section 22(3)(g) also presumes an unreasonable invasion of privacy where the personal information “consists of personal recommendations or evaluations, character references or personal evaluations about the third party”.

Section 22(2)(a) states that in determining whether disclosure would be an unreasonable invasion of privacy, a public body must consider factors such as whether “the disclosure is desirable for the purpose of subjecting activities of the government of British Columbia or a public body to public scrutiny”.

Section 22(4)(c) states that none of the above FOIPPA privacy provisions applies where a provincial statute, such as the ATA, “authorizes the disclosure”. In addition, Section 61(2) of the ATA provides that generally FOIPPA does not apply to a decision of the tribunal for which public access is provided by the tribunal and therefore the tribunal is not required to delete the names of the parties or remove other personal information from its publicly available decisions.

However, while the ATA specifically requires or “authorizes” the disclosure of information contained in a board’s reasons for decision, the board will apply the principles set out in the FOIPPA. This will ensure that patient and third parties’ identities are protected, and that all other information in a board decision is disclosed unless such disclosure would unreasonably invade a person’s privacy.

One area of information that must receive special attention is quality assurance evidence. Section 51 of the *Evidence Act* creates a detailed and comprehensive code for the protection of a hospital’s quality assurance processes undertaken by its various medical committees. It overrides the access provisions of the FOIPPA. It not only creates various statutory privileges relevant to legal proceedings, but section 51(6) also creates a statutory prohibition on publication, subject only to very limited situations, which applies “despite any provision of the *Freedom of Information and Protection of Privacy Act*”. Therefore, the board must ensure that section 51 is respected in any publication of its decision-making and that information contained in hospital quality assurance reports is not disclosed.

Disclosure Policy

All decisions issued by the board after December 3, 2004 will be written in a manner that takes into account personal privacy and section 51 considerations and is suitable for public disclosure of the decision in its entirety, wherever possible.

Decisions will contain personal information that is necessary to establish or explain the grounds for the board's findings and decision. In certain exceptional circumstances where it is necessary to include sensitive personal information, the board may invite submissions from the parties on the degree of disclosure in the public document and may edit or summarize such information in the version of the decision that is publicly disclosed.

The board will publish all decisions of the board issued after December 3, 2004 (in their entirety or with certain protected information edited or summarized) on the board's website. Copies of board decisions are also available from the board's registry office upon request. This will include final decisions, (including any dissenting opinions) and any significant preliminary decisions dealing with such matters as jurisdictional challenges, evidentiary issues or important procedural matters.

All decisions of the board made prior to December 3, 2004 will be made available to the public on the board's website or from the registry office, in an anonymized, edited or summarized version, or by making available to the public summaries of such decisions that capture the key principles and conclusions that flow from the decisions.

In order to ensure the protection of certain information and to promote public accountability, the following guidelines will generally be used in publishing decisions of the board:

- 1) The names of the panel member(s) issuing the decision will be disclosed.
- 2) The names of the appellants, respondents or any other parties and their legal counsel or other representatives will be included in the published decision.
- 3) The names and all other identifying and any personal information of patients or other persons who are not parties, but whose information may be relevant to the proceedings, will not be publicly disclosed.
- 4) Information from or related to any hospital quality assurance reports that are protected under section 51 of the *Evidence Act* will not be disclosed by the board in its publicly released decisions.
- 5) Because board hearings are not open to the public, there is an expectation that evidence given in those proceedings is also not publicly available. In order to maintain the privacy of the proceedings, individual witnesses will be referred to by their position, relationship to the parties or their initials only in published decisions.