



Hospital Appeal Board

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DECISION NO. 2015-HA-002(c)

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**

BEFORE: A Panel of the Hospital Appeal Board
Cheryl L. Vickers, Panel Chair

DATE: Conducted by way of written submissions
concluding on August 16, 2016

APPEARING: For the Appellant: Susan Precious, Counsel
For the Respondent: Ryan Berger, Counsel

SUPPLEMENTAL DECISION ON APPLICATIONS FOR DOCUMENT DISCLOSURE

[1] Further to the Board's decision of July 20, 2016, and in accordance with paragraphs [31] and [33] of that decision, the Appellant seeks from the Interior Health Authority (IHA) production of manpower and human resource documents beyond the Renal Program and Department of Nephrology and Kelowna General Hospital (KGH) morbidity and Mortality Rounds Minutes.

[2] The Board's authority to order disclosure of documents in relation to an appeal is discussed in the Board's July 20, 2016 Decision on Applications for Document Disclosure and Particulars in this appeal (2015-HA-002(b)). The Board may order disclosure of documents that may be relevant in that they relate to matters in question in the appeal if satisfied that disclosure is just and appropriate in the circumstances.

Manpower and Human Resource Documents beyond the Renal Program and the Department of Nephrology

[3] The Appellant seeks:

- a) IHA manpower documents, including stakeholder submissions and committee minutes relating to:
 - (i) the expansion of KGH's Cardiac Services, including both the KGH Department of Cardiology and KGH Department of Surgery documents, and
 - (ii) present or future expansion of KGH departments of surgery including Vascular Surgery;
- b) IHA manpower planning documents, including stakeholder submissions, that reference expansion of services provided at KGH since 2012 including current or projected nephrology or renal population needs or human resource requirements;
- c) Any IHA documents relating to the Southern Medical Program which address increased or changed responsibilities of medical staff at KGH due to the program including any IHA manpower planning documents referencing the Southern Medical Program.

[4] Counsel for the Appellant has provided a 2001 IHA draft document addressing requirements for additional dialysis stations to support additional workload resulting from the enhancement of surgical services and a letter dated August 14, 2001 from the Appellant providing information as to how increased cardiac services impact nephrology services. The August 2001 letter provides information respecting dialysis needs and postoperative renal disease incidents in the population undergoing cardiac surgery.

[5] Counsel for the Appellant also provides a copy of the KGH Renal Program Nephrology Plan (the Renal Plan) prepared in the spring of 2012 and notes that the Renal Plan forecast two developments outside of the renal program that were expected to increase the renal program's manpower requirements, namely: the expansion of Cardiac Services at KGH; and the development of the Southern Medical Program.

[6] Counsel for the Appellant advises that it is their understanding that KGH Cardiac Services did indeed expand significantly as predicated. Consequently, the Appellant seeks disclosure of updated information relating to the impact of the expansion of the KGH Cardiac Services on KGH's Renal Program.

[7] Similarly, Counsel for the Appellant submits that an increase in vascular surgery procedures at KGH results in increased demand on renal services. Consequently, the Appellant also seeks KGH Vascular Surgery Manpower documents.

[8] Counsel for IHA submits that manpower planning in the IHA is undertaken on an annual basis by the IHA Board of Directors and that the Board is responsible for ensuring that each Department has sufficient manpower to satisfy its commitments in the upcoming year including service commitments to other programs and external programs such as the Southern Medical Program. Counsel advises that the Board addresses this obligation through the preparation of regional Physician Resource Plans (PRP). Counsel for IHA provides a copy of the most recently approved PRP.

[9] Counsel for IHA advises that submissions by individuals or groups regarding the manpower needs of a particular Department or Division are typically directed to the appropriate Medical Advisory Committee and then, if recommended, the Health Authority Medical Advisory Committee (HAMAC), which then may make a recommendation to the Board. Counsel for IHA submits that irrespective of the submissions of interested stakeholders, the Board's PRP are the conclusive manpower plans for the upcoming year.

[10] In reply, Counsel for the Appellant submits that the PRP is not the only document relevant to the human resource requirements of the facilities and programs operated by IHA, the needs of the population served, and the ability of IHA's resources to accommodate the Appellant's appointment. The PRP that has been produced comprises a chart with approved numbers for full-time equivalent physicians for the various departments and areas within the IHA. It says nothing of the circumstances informing the choice of FTE numbers. Counsel for the Appellant submits the PRP cannot be read in isolation of the documents and submissions that were before the Medical Advisory Committee, HAMAC and the Board and points to the 2001 draft cardiac submission which talks about the increased need for nephrology services with an increase in cardiac surgery to illustrate the point. Counsel argues it is "precisely the stakeholder submissions at the various levels and other information before the committees and IHA Board as well as any minutes or other records of committee reviews of the information that are most likely to provide relevant information about the forecasted or potential impacts on nephrology needs within the population and nephrology human resource requirements, as well as IHA's resources to accommodate nephrology appointments".

[11] With respect to the Southern Medical Program, Counsel for the Appellant advises that this program did launch as anticipated in the Renal Plan. Counsel submits that the Southern Medical Program is relevant to the needs of the Renal Program, and the appeal generally, because its presence likely changes and increases the needs of the Renal Program as it is expected to create additional teaching and administrative duties for program medical staff.

[12] Counsel for IHA submits that the Southern Medical Program is operated by the University of British Columbia and is separate and distinct from IHA. Counsel submits that the program's presence in IHA facilities does not have any significant impact on the clinical work undertaken by the members of the IHA

Medical Staff. In Reply, Counsel for the Appellant submits this assertion is contrary to research and provides two articles from medical journals about the impact of surgical education on time in the operating room and the impact of medical student teaching on Family Physicians' time. Counsel submits the creation of an additional academic program is also expected to create additional teaching and administrative duties on medical staff.

Do the documents requested "relate to matters in issue in the appeal"?

[13] As the Board determined in its July 20, 2016 Decision on Applications for Document Disclosure and Particulars, the human resource requirements of the facilities and programs operated by the Health Authority and the needs of the population served by the Health Authority with respect to nephrology services, are relevant to the question of whether the Appellant should be granted privileges as a nephrologist within the IHA. Counsel for the Appellant's submission provides information as to how increased cardiac services, including cardiac surgery, can impact nephrology services, and also how an increase in vascular surgery can result in increased demand on renal services. While the PRP may indicate what the Board determines on an annual basis for physician FTE requirements in the various departments and areas of the IHA, I am satisfied that it is the submissions and other documents before the Medical Advisory Committees, the HAMAC, and ultimately the Board itself that provide the relevant information about community need for nephrology services and the potential or forecasted impacts on nephrology services by increases to services by other programs and departments.

[14] I am satisfied that the documents described in (a)(i) above relate to matters in question in the appeal and that the documents described in (a)(ii) specifically relating to Vascular Surgery relate to matters in question in the appeal. I am not satisfied on the basis of the information provided that documents relating to the expansion of KGH Departments of Surgery other than with respect to Cardiac Surgery or Vascular Surgery relate to matters in issue in the appeal.

[15] The request at item (b) is too broad in that it requests documents referencing the expansion of all services provided at KGH since 2012. Other than the expansion of cardiac services including cardiac surgery, and the expansion of vascular surgery, which are covered in the request at (a), I am not satisfied on the basis of the information provided that documents relating to the expansion of other services relate to matters in question in the appeal. To the extent the request seeks manpower documents relating to current or projected nephrology or renal population needs or human resource requirements, I am satisfied they relate to matters in question in the appeal.

[16] Counsel for IHA advises that there is no medical manpower committee at KGH and that manpower and physician resource planning is discussed through

the Medical Advisory Committee. Counsel advises that IHA has produced minutes of the Medical Advisory Committee for meetings occurring between June 18, 2012 and June 20, 2016. Counsel for IHA also advises that IHA has confirmed that other than documents disclosed in accordance with the Board's Order of July 20, 2016, there are no further Renal Program of Department of Nephrology manpower or resource documents, including any manpower or human resource plans, since 2012 and that there is no update to the 2012 KGH Renal Program Nephrology HR Plan. I make no order respecting the request at (b) as it would appear the relevant part of the request has been covered off by the Board's earlier order.

[17] With respect to the request at item (c), although the Southern Medical Program is not a facility or program operated by the IHA, I am satisfied that documents addressing the human resource needs of facilities and programs operated by the IHA, in particular the Renal Program and Department of Nephrology, as a result of the Southern Medical Program relate to a matter in issue in the appeal. The request as worded seeking documents addressing the responsibilities of medical staff at KGH generally due to the program is too broad and includes documents that do not relate to matters in question in the appeal.

Is it just and appropriate in the circumstances to order production?

[18] The parties have not addressed this question. I can see no reason why it would not be just and appropriate to order the documents requested that I have found to relate to matters in question in the appeal.

KGH Morbidity and Mortality Rounds Minutes

[19] The Appellant seeks all KGH Morbidity and Mortality Rounds Meeting Minutes (M&M Rounds Minutes) that relate to any of the eight patient care allegations identified in IHA's letter of February 9, 2016, or to any further allegations of patient care for which IHA is obligated to provide notice by August 2, 2016. Additionally, if no Morbidity and Mortality Rounds took place in relation to the patient care allegations, the Appellant seeks confirmation of same.

[20] Counsel for the Appellant submits Morbidity and Mortality rounds are relevant to patient care allegations because they are peer physician meetings to review patient complications, medical errors, or unusual circumstances surrounding patient care with the goal of learning from those events and improving patient care.

[21] Counsel for IHA agreed to identify whether there are M&M Rounds Minutes relating to the patient care concerns raised and, if so, disclose those documents. Counsel confirms that IHA has indicated it has been unable to locate specific M&M Rounds Minutes at KGH.

[22] I agree that M&M Rounds Minutes relating to any of the specific patient care allegations identified in this appeal would be relevant and should be produced if they exist. In the face of counsel's advice that IHA has not been able to locate any such documents, I make no order in this regard.

ORDER

[23] The Hospital Appeal Board orders:

The IHA must produce to the Appellant copies of the following documents by **Wednesday, August 31, 2016**:

- I. IHA manpower documents, including stakeholder submissions and committee minutes relating to:
 - i) the expansion of KGH's Cardiac Services, including both the KGH Department of Cardiology and KGH Department of Surgery documents, and
 - ii) present or future expansion of KGH departments of surgery respecting Cardiac and Vascular Surgery;
- II. Any IHA documents addressing increased or changed responsibilities of medical staff at the KGH Renal Program or Department of Nephrology due to the Southern Medical Program.

"Cheryl Vickers"

Cheryl L. Vickers, Panel Chair
Hospital Appeal Board

August 17, 2016