BRITISH COLUMBIA

Hospital Appeal Board

Fourth Floor, 747 Fort Street
Victoria BC 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.bc.ca
Email: hab@gov.bc.ca

DECISION NO. 2015-HA-002(h)

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:	Cheryl L. Vickers, Chair's delegate	
DATE:	Conducted by way of written and oral submissions, concluding on October 24, 2018	
APPEARING:	For the Appellant:	Susan Precious, Counsel
	For the Respondent:	Ryan Berger, Counsel

[1] In the fall of 2016, the Hospital Appeal Board (HAB) heard the appeal of Dr. Kates from the decision of the Board of Directors, Interior Health Authority, to revoke or refuse to renew his appointment to practice at Kelowna General Hospital (KGH) or anywhere within the Interior Health Authority (IHA). Prior to the conclusion of the hearing, the parties came to an agreement to resolve the appeal and asked the HAB to make an order including the terms of settlement under Rule 6(2)(e) of the HAB's Rules. The HAB made an Order on December 5, 2016, dismissing the appeal on terms and conditions agreed to by the parties (the Order). Among other things, the Order provided for the appointment of Dr. Kates to the Provisional Medical Staff in the Nephrology Department, of the Department of Medicine at KGH. The Order provided that the parties may return to the Chair or the HAB for "clarification on implementation of this Order".

[2] The parties seek clarification respecting the operation of section 6(c) of the Order (internal monitoring) and its interplay with section 7 (complaints handled under IHA's Medical Staff Bylaws, Rules and policies).

[3] Section 6(c) of the Order provides:

> 6. During the course of Dr. Kates' provisional privileges and until 2019, or until such earlier time as determined solely by the Respondent:
>
> ...
>
> (c) The parties will agree on an appropriate monitor. The monitor will be available to receive concerns from staff and physicians in relation to Dr. Kates' behavior and care. The monitor shall promptly notify Dr. Kates (within 48 hours, if possible) of any such concerns and assist in resolution;

[4] Section 7 of the Order provides:

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

[5] The parties agreed to the appointment of two individuals as monitors. Internal monitoring commenced in April 2018 when Dr. Kates began his re-integration to KGH with a Graduated Return to Work Schedule. Internal Monitoring will finish in January 2019.

[6] The parties agree that the internal monitoring process does not replace the Rules and Bylaws, and that sections 6(c) and 7 of the Order must be read together.

[7] The internal monitoring is an additional layer of oversight intended to provide a timely vehicle to communicate concerns about behavior or care to Dr. Kates, and to assist with resolution of concerns, all in a supportive environment intended to facilitate and support Dr. Kates' successful re-integration to the hospital setting during the provisional privileging period. The internal monitoring is not intended to usurp the role of Dr. M as Division Head but, to assist Dr. M in her role to ensure quality of care within the program. It provides a vehicle for the communication and resolution of concerns that does not require Dr. M to communicate concerns directly to Dr. Kates, and provides Dr. Kates a forum within which to address and resolve concerns without necessarily having to deal work directly with Dr. M. That is not to say that Drs. M and Kates ought not to discuss concerns directly, or that they will not work together to resolve concerns as appropriate. But the initial communication to Dr. Kates of any concerns respecting behavior or patient care should be through the monitors.

[8] In communicating any concern to Dr. Kates, the monitors should provide sufficient detail and information for Dr. Kates to know what the concern is about. The monitors and Dr. Kates should meet to discuss the concern as soon as possible.

[9] Any concern respecting patient care must also be communicated to Dr. M in accordance with agreed protocol.

[10] Depending on the nature of the patient care concern, the concern could be addressed and resolved between Dr. Kates and the monitors. Some care concerns may appropriately necessitate the involvement of other people, including Dr. M or others from the KGH Medical community, without invoking formal Bylaw processes.

[11] The Bylaws are there to ensure there is a procedurally fair process to deal with complaints that may have disciplinary ramifications. If a concern is of a sufficiently serious nature, then it could be dealt with as a complaint under the Bylaws.

[12] Nobody wants patient care to be compromised, and I have every expectation that the parties will work together cooperatively and collaboratively to ensure patient care is not compromised. During the provisional privileging period, however, while the Bylaws remain in place, the internal monitoring protocol agreed to by the parties should also be followed. Given the widely varying nature of potential concerns, there will be no "one size fits all" process for resolution. While Dr. Kates can expect concerns to be brought to his attention by the monitors, he ought not necessarily to expect that the same process will always be followed regarding resolution of a concern. Hopefully, most concerns can be easily addressed and resolved without further processes being required, or, if further discussions are appropriate, that those discussions can collaboratively lead to resolution. Other concerns, however, due to their significance and/or potential impact, may invoke processes of a more formal nature under the Bylaws and Rules.

[13] I trust this clarification assists the parties moving forward.

"Cheryl Vickers"

Cheryl L. Vickers

October 31, 2018