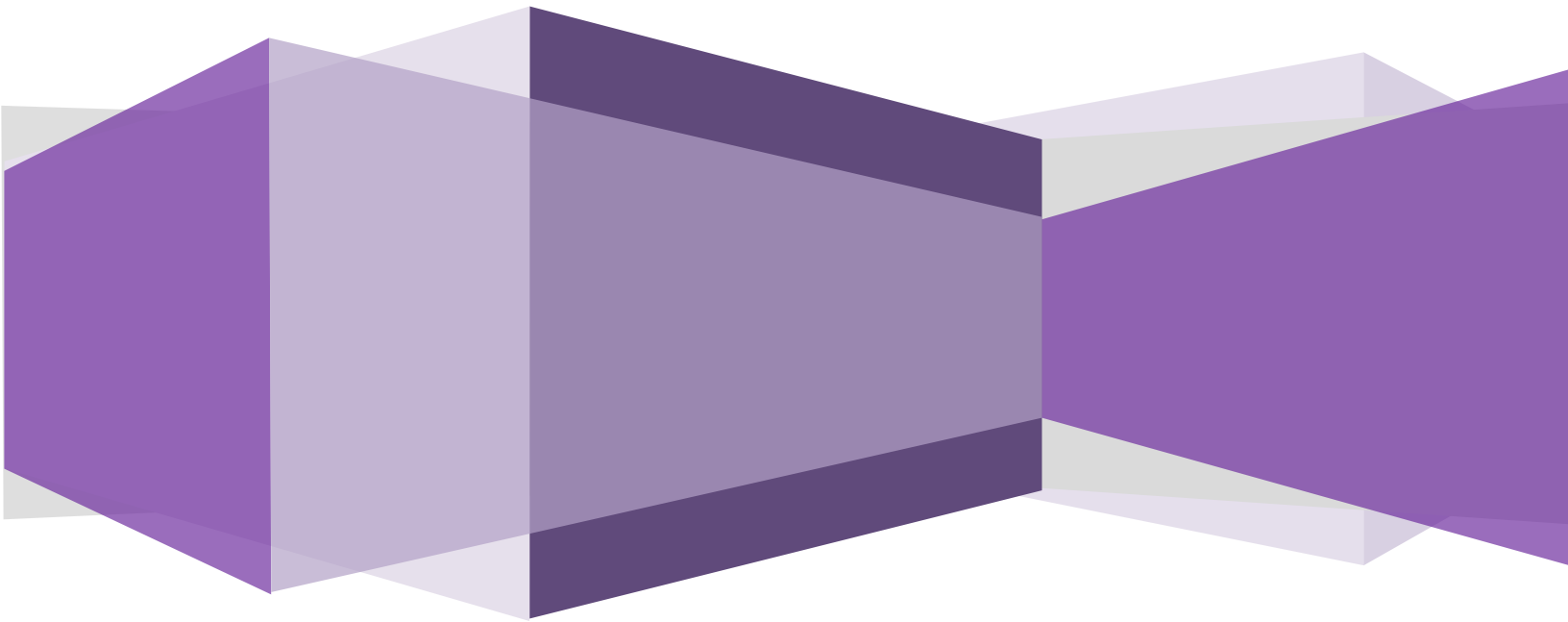
BRITISH COLUMBIA

Hospital Appeal Board
2016-2017 Annual Report



BRITISH COLUMBIA

Hospital Appeal Board

October 3, 2017

The Honourable David Eby
Ministry of Attorney General
Room 232, Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Attorney General:

Re: Hospital Appeal Board 2016-2017 Annual Report

On behalf of the Hospital Appeal Board, I respectfully submit the Annual Report of the Hospital Appeal Board for the period April 1, 2016 to March 31, 2017.

Sincerely,

David G. Perry
Chair
Hospital Appeal Board

Enclosure

Message from the Chair

I am pleased to submit the Annual Report of the Hospital Appeal Board ("HAB") for the fiscal year beginning April 1, 2016 and ending March 31, 2017. This report is submitted pursuant to section 59.2 of the *Administrative Tribunals Act*.

Appeals during Reporting Period

Section 59.2(a) of the *Administrative Tribunals Act* requires the Board to provide a review of its operations during the preceding reporting period. During this reporting period, a total of 28 new appeals were filed with the Board.

All but one of these new appeals filed in this reporting period were appeals in regard to a single decision of the Fraser Health Authority to terminate the privileges of the entire Department of Anesthesiology at the Surrey Memorial Hospital, a decision affecting 26 individual anesthesiologists who chose to appeal. Further details of these appeals filed are provided later in this report pursuant to section 59.2(c) of the *Administrative Tribunals Act*.

An additional 6 appeal matters that were carried over from the previous reporting period were also dealt with during this period.

Out of the 34 appeals dealt with by the Board in total, 32 were closed during this reporting period. The other 2 appeals are before a panel of the Board for adjudication, one having been heard and awaiting a decision and the other set for oral hearing in the next reporting period.

Of those 32 appeals closed during this reporting period, 88% (28 appeals) were resolved and withdrawn by consent of the parties prior to proceeding to a hearing. One appeal was resolved by consent and withdrawn after the oral hearing had commenced but prior to a final decision being rendered by the panel. One further appeal was withdrawn during the course of a joint hearing of two appeals under section 37 of the *Administrative Tribunals Act.*

Another 2 of the appeals dealt with in this reporting period proceeded to a full hearing on their merits followed by a final decision rendered by the hearing panel. These hearings were conducted in person before a panel of three HAB members.

The issues considered in these appeals included: the impact of granting privileges on other surgical services; whether there is a need in the community for an additional ophthalmologist surgeon; if so, whether the appellant ought to be appointed without a search and selection process; summary suspension of a physician's privileges; quality and standard of care to be applied to a physician's conduct; and whether remediation is appropriate in the circumstances.

I am not aware of, nor has the Board been served with, any applications filed in the BC Supreme Court for Judicial review of any decisions issued by the HAB in this reporting period.

Forecast of workload for the next reporting year and trends noted

Section 59.2(f) of the *Administrative Tribunals Act* requires the Board to provide a forecast of the workload for the succeeding reporting period. The HAB's workload for the 2017/2018 reporting period is expected to decrease from the numbers seen in this reporting year which was much busier than has been the norm over the Board's 44-year history. We expect that volume will return to more usual levels to approximately 2- 4 new appeals filed per year. This forecasted workload is still slightly higher than the average over many years in the past (generally 1-2 appeals per year) but is consistent with the trend the Board has seen over the past 4 years. The higher number of appeals in the current reporting period was primarily the result of a decision at a single hospital affecting a large number of practitioners, which is unlikely to be an ongoing occurrence.

Section 59.2(g) of the *Administrative Tribunals Act* requires the Board to report any trends or special problems it foresees. The only trend or special problem that we have identified in this reporting period is the sharp increase in the number and complexity of appeal over the past several years which we will need to continue to monitor over time.

The Board found it difficult at times to provide timely hearings for the number of increasingly long and complex appeals due to a lack of board members available to sit on these multiple hearings that take place over several weeks at a time (up to 5 weeks in this reporting period). In order to ensure the Board's ability to hear the appeals in a timely manner, I used section 6 of the *Administrative Tribunals Act* to appoint an additional, highly qualified, member on a temporary basis. If the volume proves to be unmanageable with the number of current statutory members, it may be necessary for the legislation to be amended to allow for more than the current statutory limit of 10 board members to be appointed in order to ensure timely hearing of these important matters.

Plans for improving the Board's operations

Finally, section 59.2(h) of the *Administrative Tribunals Act* requires the Board to report its plans for improving operations in the future. During this reporting period, the Appeals Office cluster responsible for providing administrative support to the Board was involved in planning for the replacement and upgrading of the electronic appeal management system that is used by the Board and the seven other tribunals that are jointly administered through a shared office and staff. The existing appeal management system is nearly 20 years old and its software is no longer supported. A new appeal management system will allow the shared administrative office to continue to function effectively and efficiently, using modern information technology. The Board hopes the new system will be in place and available for the HAB to use in late 2017. This will help ensure that the HAB is able to track and report out on key performance indicators with confidence in the accuracy of the information.

David G. Perry
Chair
Hospital Appeal Board

Mandate

The Hospital Appeal Board is a quasi-judicial administrative tribunal continued under Section 46 of the *Hospital Act*. The Board's purpose is to provide a specialized, independent, accessible and cost-effective avenue of appeal, as an alternative to the court process, for health practitioners (doctors, dentists, midwives and nurse practitioners) who disagree with a decision of a hospital's board of management regarding hospital privileges.

The Board hears appeals filed by the prescribed health practitioners from:

- a decision of a hospital's board of management that modifies, refuses, suspends, revokes or fails to renew a practitioner's permit to practice in a hospital; or
- the failure or refusal of a hospital's board of management to consider and decide on an application for a permit in a timely manner.

The Board generally holds 2-3 full oral court-like hearings per year. In most cases, a panel of three members hears the merits of each appeal. Each appeal usually also involves a number of preliminary issues and rulings made either by the Board Chair or the Panel Chair designated to hear the appeal.

Appeals are conducted as a "hearing de novo" which requires the Board to hold a new hearing in the full sense with witnesses, substantial documentary evidence and oral argument. Consequently, hearings can vary widely in length depending on the complexity of the issues under appeal and the amount and kind of evidence to be adduced, with some taking several days or in some cases many weeks to complete. All parties to the proceedings are almost always represented by experienced legal counsel.

The Board has the authority to affirm, vary, reverse or substitute its own decision for that of a hospital board of management on the terms and conditions it considers appropriate. After a hearing, the Board issues detailed written reasons for its decision which are made available to the public on the Board's website.

For further information please see the board's website at www.hab.gov.bc.ca .

Board Membership

Under section 46(4) and (4.1) of the *Hospital Act* the minister **must** appoint 10 members of the Hospital Appeal Board as follows:

(a) one member designated as the chair;

(b) one member designated as the vice-chair;

(c) one member selected from among 3 or more individuals nominated by the College of Physicians and Surgeons;

(d) one member selected from among 3 or more individuals nominated by the College of Dental Surgeons;

(e) one member selected from among 3 or more individuals nominated by the College of midwives;

(f) one member selected from among 3 or more individuals nominated by the British Columbia Medical Association [now known as Doctors of BC]; and

(g) four other members selected after a merit based process.

Throughout this reporting period, the HAB membership consisted of the following members:

BOARD MEMBER	ROLE	TERM EXPIRY
David G. Perry	Chair	December 31, 2017
Stacy Frank Robertson	Vice-Chair	December 31, 2019
Dr. Douglas H. Blackman	Member	May 31, 2018
Dr. Paul Champion	Member	December 31, 2018
Dr. Kevin Doyle	Member	December 31, 2019
Joanna Nemrava	Member	May 31, 2018
Dr. Maureen Piercey	Member	December 31, 2019
Charles (Rick) Riley	Member	May 31, 2018
Lorraine Unruh	Member	December 31, 2019
Cheryl Vickers	Member	March 1, 2018

BIOGRAPHIES FOR THE BOARD MEMBERSHIP DURING THE REPORTING PERIOD ARE AS FOLLOWS:

DAVID PERRY (CHAIR)

David Perry focuses his practice on insurance defense and environmental law and is an experienced litigator in commercial and motor vehicle defense cases. He also brings considerable skills as a negotiator and consensus builder to legal challenges involving parties holding conflicting viewpoints. Mr. Perry has had diverse experience in resolving land use and resource disputes as counsel, chair of administrative tribunals and as a commissioner of inquiry. With his proven ability to bring together government, industry and citizen groups, he has helped to resolve several seemingly intractable environmental disputes.

Mr. Perry has acted as counsel for the provincial government, major resource companies and community groups in the course of resolving litigated and mediated resource disputes. He has acted in leading environmental law and insurance cases involving advocacy before regulators, the Environmental Appeal Board, B.C. Supreme Court, BC Court of Appeal and the Supreme Court of Canada.

STACY FRANK ROBERTSON (VICE-CHAIR)

Stacy Frank Robertson is currently Senior Enforcement Counsel at the Investment Industry Regulatory Organization of Canada in Vancouver, BC, which regulates professional discipline for registered securities industry individuals and firms. Previously he worked at several Vancouver based firms practicing in the areas of insurance, construction, employment, labour and administrative law. He has appeared before all courts in BC and before the BC Labour Relations Board, the Canadian Industrial Relations Board and the BC Securities Commission. He has served as a panel member on the Employment Assistance Appeal Tribunal and is currently a member of the Eligibility Appeals Committee for BC School Sport. He holds a Bachelor of Law from the University of New Brunswick, a Bachelor of Commerce from McMaster University and a diploma from Moscow State University in Political History of Russia and the U.S.S.R..

DR. DOUGLAS BLACKMAN

Dr. Douglas Blackman is the former Senior Deputy Registrar and Deputy Registrar with the College of Physicians and Surgeons of BC. Previously, he had private practices in Prince George and Victoria. Dr. Blackman is the Past President of the Federation of Medical Regulatory Authorities of Canada. He holds his Medical Doctorate from the University of British Columbia.

DR. PAUL CHAMPION

Dr. Paul Champion is a retired physician, registered in British Columbia, whose specialist qualification was the FRCP(C) Internal Medicine and in Respirology. He holds the title of Prof. Emeritus Clinical Medicine at the University of British Columbia. Dr. Champion held consulting privileges at the BC Cancer Agency, the GF Strong Rehabilitation Unit and with the BC C.D.C Tb Service up until his retirement. In addition, he was the Medical Director at Vancouver General Hospital Medical Bronchoscopy Program. Dr. Champion holds his Bachelor of Medicine and Bachelor of Surgery from London and his Doctor of Philosophy from the Netherlands. Dr. Champion is currently a Trustee for the Gabriola Volunteer Fire Department and Rescue Services and also a Director of the Gabriola Community Health Centre Foundation.

Dr. Kevin Doyle

Dr. Kevin Doyle received his degree of Doctor of Dental Medicine from the University of British Columbia and has been in private practice since 1980. He holds an undergraduate Bachelor of Science degree in Chemistry from the University of Victoria. He is a Fellow of the American College of Dentists, the International College of Dentists, and the Pierre Fauchard Academy. He is an Assessment Evaluator and Assessment Invigilator for the National Dental Examining Board of Canada. He has served as an examiner for the National Dental Examining Board of Canada and the College of Dental Surgeons of British Columbia. He actively participated in the transition of the *Dentists Act* to the *Health Professions Act* as Chairperson for the College of Dental Surgeons of BC Quality Assurance Committee. He holds a Graduate Certificate in Evidence Based Health Care from the University of Oxford and has held past appointments as Reviewer for the Cochrane Oral Health Group, Council member on the Canadian Collaboration on Clinical Practice Guidelines (CCCPG) and Chairperson of the Guideline Advisory Committee of the CCCPG.

Joanna Nemrava

Joanna Nemrava is Head of the Department of Midwifery at the Royal Inland Hospital in Kamloops. In addition, she is a Clinical Preceptor for the Midwifery Education Program at the University of British Columbia's (UBC) Division of Midwifery. Currently, Ms. Nemrava serves as Treasurer on the Board of the Midwives Association of BC and President of the Canadian Association of Midwives in 2013/14. Ms. Nemrava holds a Bachelor of Midwifery from the University of BC.

Dr. Maureen Piercey

Dr. Piercey was a family a physician in Victoria for a number of years. She has a certification in Addiction Medicine and consulted in that field for over a decade. She has a special interest in the health of physicians and has been involved in clinical care and formal programs in physician health. From 2000 until spring 2011 she was a Deputy Registrar at the College of Physicians and Surgeons of BC where she was responsible for matters relating to sexual misconduct by physicians, physician impairment, and monitoring of physicians who had been the subject of disciplinary actions. She worked closely with physicians who had disciplinary action, significant mental and addition problems, and who were undergoing remediation.

Charles (Rick) Riley

Rick Riley has 30 years of experience in executive leadership positions in the public hospital and health care sectors in BC and Alberta. Most recently, he was the Community Administrator (Central Okanagan) for the Interior Health Authority, for which he was previously the Chief Operating Officer (Kootenay Boundary). Before that he was the CEO of the Greater Trail Community Health Council. Active in his community, Mr. Riley is a former President of the Rotary Club of Trail BC, served as Vice Chair of the Board for the Central Okanagan Child Development Association, President of the Regional Council (BCSI) of the Canadian Red Cross, and a Member of the Western Zone Council of the Canadian Red Cross. Mr. Riley will be Chair of the Western Council of the Canadian Red Cross for two years beginning June 2012 and Past President of the BC Southern Interior Region. He holds his Bachelor of Commerce from McGill University, and his Masters in Health Service Administration from the University of Alberta.

LORRAINE UNRUH

Lorraine Unruh has an extensive background in hospital administration and retired in 2012 as the Acute Area Director for the South Okanagan Hospitals (Penticton, Summerland, Oliver, Princeton, and Keremeos). She is currently a Board Member of the Health Professions Review Board. Active in her community, she is a Board Member of the South Okanagan Medical Foundation. Lorraine Unruh holds a Diploma of Nursing, a Bachelor of Science in Nursing and a Master of Arts degree in Organizational Leadership.

CHERYL VICKERS

Cheryl is a lawyer whose practice focusses on dispute resolution, including mediation and arbitration, administrative law, and real property assessment law.

Cheryl chaired BC's Property Assessment Appeal Board from 2003 to 2015, and served as Vice-Chair from 1995-2003. Since 2007, Cheryl has chaired BC's Surface Rights Board, a tribunal exercising jurisdiction under the *Petroleum and Natural Gas Act* and other statutes to resolve surface lease and right of way disputes between landowners and the holders of subsurface rights.

From March 2013 to April 2014, Cheryl served as Acting Chair of BC's new Civil Resolution Tribunal, assisting with the development of Canada's first on-line tribunal to help citizens resolve strata and small claims disputes.

Cheryl was active in the development of the British Columbia Council of Administrative Tribunals (BCCAT), and served for many years as a member of that organization's Board of Directors, including as its President from 2004-2006. She assisted with curriculum development for BCCAT courses to offer training to appointees of quasi-judicial boards and tribunals and is an instructor of the Foundations of Administrative Justice for Administrative Decision Makers and Foundations of Administrative Justice for Staff courses, as well as the Decision Writing and Hearing Skills Workshops.

Cheryl has presented at conferences of the British Columbia Council of Administrative Tribunals, the Council of Canadian Administrative Tribunals, the Continuing Legal Education Society, the Canadian Property Tax Association and the Appraisal Institute of Canada on a variety of subjects. She serves on the editorial boards of two CLE Practice Manuals – *Real Property Assessment* and *Administrative Law*.

In October 2009, Cheryl received BCCAT's Recognition Award for outstanding contribution to administrative justice.

Operations

Effective December 1, 2004, the administrative support functions of the HAB were consolidated with the Environmental Appeal Board/Forest Appeals Commission Appeals Office (Appeals Office) in Victoria.

In addition to the HAB, the Appeals Office provides administrative support to five other adjudicative tribunals. This clustering of the administrative support for eight independent appellate tribunals has been done to assist government in achieving economic and program delivery efficiencies by allowing greater access to resources while, at the same time, reducing administration and operating costs. The additional tribunals include the:

- Community Care and Assisted Living Appeal Board;
- Health Professions Review Board;
- Financial Services Tribunal;
- Industry Training Appeal Board; and,
- Oil and Gas Appeal Tribunal.

This move has resulted in significant savings to government for the operation of the HAB through a shared services cluster approach which takes advantage of synergy and assists government in achieving economic and program delivery efficiencies.

This arrangement has been in operation for 12 years now and has proven to be a very effective and efficient means for providing administrative support to the HAB, which in turn enables the HAB to effectively and efficiently fulfill its appellate mandate to the public.

Effective April 1, 2017, host Ministry responsibilities for administration of the Hospital Appeal Board (including budget oversight and member appointments, human resources, facilities, and records supports, etc.) were transferred to the Attorney General as part of the Tribunal Transformation Initiative.

Contact Information

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Victoria BC V8W 3E9

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EMAIL: hab@gov.bc.ca

WEBSITE: http://www.HAB.gov.bc.ca/

Appeal Activity and Decisions Issued

Appeals Filed

There were 28 new appeals filed during this reporting period, in addition to six appeals carried over from the previous reporting period. The new appeals filed are described below. Only two of these 34 matters (6%) remained outstanding at the end of this reporting period.

2016-HA-003 by a group of anesthesiologists, filed May 25, 2016 – Single appeal filed on behalf of 26 individual anesthesiologists against a decision of the Fraser Health Authority to issue termination notices to the department of anesthesiology at Surrey Memorial Hospital. It was determined by the Chair that under the legislation appeals must be made to the HAB by each individual practitioner rather than a single appeal on behalf of a group of practitioners. This appeal was amended and 26 individual appeals were filed by each of the affected anesthesiologists.

2016-HA-004 by a physician, filed June 2, 2016 – Appeal by an interventional cardiologist from a decision of the Board of Directors of the Vancouver Coastal Health Authority to restrict his hospital privileges to exclude his provision of interventional cardiac services in the Vancouver General Hospital Catheterization Laboratory. The appeal was set for a 14-day hearing to commence April 24, 2017 but was subsequently adjourned to commence in November 2017 at the request of the parties.

2016-HA-005 through 2016-HA-030 by 26 individual anesthesiologists, filed September 9, 2016 – Twenty-six appeals filed on behalf of 26 individual anesthesiologists against a decision of the Fraser Health Authority to issue termination notices to the members of the department of anesthesiology at Surrey Memorial Hospital. The appeals were combined under section 37 of the *Administrative Tribunals Act* and given the group file number 2016-HA-G02. The issues were resolved by the parties and each of the appeals was subsequently withdrawn by the Appellants.

Board Decisions

In addition to the two decisions issued on the merits of appeals carried forward from the previous reporting period, which are summarized below, 28 appeals were withdrawn prior to a hearing. During this reporting period, of the 32 appeals closed, 88% (28 appeals) were finally disposed of by the HAB without a hearing. One additional appeal was resolved between the parties after the hearing had commenced but prior to its conclusion and a consent order was issued by the Board pursuant to section 17 of the *Administrative Tribunals Act* dismissing the appeal on terms and conditions. One further appeal was withdrawn and dismissed during a hearing. Five preliminary decisions were issued regarding applications for interim relief for:

- Directions on the scope of issues in appeal,
- Document disclosure and particulars,
- An Order for document production, and
- Extension of time to file an expert report.

Final decisions on the merits

2015-HA-001(a)

Decision Date: January 9, 2017

Appellant: Dr. Michael Figurski

Respondent: Interior Health Authority ("IHA")

Issues: Whether the summary suspension and decision to revoke all of the Appellant's privileges in all IHA facilities was warranted, having regard to the following questions:

1. Was a summary suspension of the Appellant's privileges (pending a full review of the concerns) justified in the circumstances?

2. What is the appropriate quality of care/standard of care to be applied to the Appellant's conduct in this case?

3. Did the Appellant meet the applicable standard?

4. If not, is remediation appropriate in this case?

Disposition: The panel acknowledged the significant impact of the decision on the appellant and his ability to practice in his chosen field in the way in which he wished to. However, the panel found that the evidence, on balance, satisfied them that the suspension and revocation of all of the appellant's privileges was an appropriate sanction and continued to be justified in all the circumstances. The panel also agreed with the hospital's board of directors that any IHA medical advisory committee that reviews any future application for privileges by the appellant be informed of the reasons for his suspension and the subsequent revocation of his privileges. The decision of IHA was confirmed. **The appeal was dismissed.**

The panel found that the concerns with the appellant's actions were sufficiently serious as to constitute grounds for the summary suspension, pending a full consideration by the board of directors and that such action was justified in order to protect the safety and best interests of the patients in the IHA facilities.

The panel stated that the Appellant had a responsibility to be aware of, and to follow, the requirements in the Medical Staff Bylaws and Medical Staff Rules regarding the provision of appropriate and safe care, the circumstances where transfer of a patient is appropriate, and the prompt and thorough completion of medical records and progress notes. In assessing whether the appellant met these requirements and provided appropriate clinical management, the panel found that the appellant should not be held to the level of care that may be provided by the most experienced and highly qualified physicians in a large urban center. Rather, the appropriate standard of care for which his conduct in treating his patients is to be judged is on the basis of a reasonable and prudent

physician practicing emergency medicine in a rural hospital in British Columbia at the relevant time.

The panel concluded that the appellant violated the requirements of the Bylaws and Medical Staff Rules where he failed to meet the accepted standards of care of the IHA with respect to documentation, appropriate clinical decision making, following the IHA-accepted patient care protocols, and providing quality medical care for the patients. While recognizing the appellant's professional interest in this matter, the panel was satisfied that the evidence before it demonstrated that the appellant did not meet the quality of care standards applicable in a rural hospital emergency room of the IHA.

Finally, the panel found that there was a place for remediation in this case, however, this must be preceded by a recognition on the part of the appellant that remediation is necessary. The panel found that while there was a greater recognition on the appellant's part of some of the deficiencies, it was yet to be tested and the panel saw no evidence of concrete steps to address them. In addition, the position taken by IHA made it challenging for the appellant to successfully achieve remediation within the IHA, and possibly any other health authority in BC. The IHA decision does not preclude the appellant from taking steps to address the deficiencies that have been identified and applying for privileges within IHA at some future date on the basis of his remediation.

Appeal Decision: http://www.hab.gov.bc.ca/final_dec/2015ha001a.pdf

2016-HA-001(a) [Group file: 2016-HA-G01]

Decision Date: September 29, 2016

Appellant: Dr. Michael Butler

Respondent: Vancouver Coastal Health Authority

Issue: Whether there was a need in the community for an additional ophthalmologist surgeon at Richmond Hospital and, if yes, whether the appellant should be granted privileges without a further search and selection process.

Disposition: After careful consideration of the evidence and submissions, the panel found that the appellant had not demonstrated a need for a fourth ophthalmologist to be appointed to the medical staff at Richmond Hospital, whether that be with full OR privileges, shared privileges, or partial privileges. The panel also found that there would be an adverse impact on other surgical services at Richmond Hospital if a fourth ophthalmologist was added. Accordingly, the decision of the board of directors was upheld. T**he appeal was dismissed**.

The appeal was based on the appellant's assertion that there is need in the Richmond community for a fourth ophthalmologist with privileges at Richmond Hospital because of the inability of the current three ophthalmologists to meet the demand for cataract surgeries within reasonable wait times, and because of the demand in the Richmond

community for a retina specialist with hospital privileges. The panel accepted the proposition that the needs of the community are the needs of the hospital.

The panel was not satisfied that the appellant's patients would receive a lower standard of care if he was not granted hospital privileges. The panel acknowledged that the appellant's training in retinal diseases was a potential service to the community, however, medical retinal services are provided in a physician's office, not in the hospital. In addition, the panel was assured that the appellant's position within the Provincial Retinal Disease Treatment Program was secure for as long as the program is operational. Thus, hospital privileges were not required for the appellant to continue to provide medical retinal services in Richmond.

The panel did not find the argument against patients travelling to Vancouver for medical attention compelling as while it may be inconvenient for some to travel to Vancouver, in reality it is a short distance and, given the nature of the surgery, patients are not themselves driving a vehicle.

Considerable evidence was led about the allocation of OR time and the amount of unused OR time, relative to the issues of whether there is sufficient OR time to support an additional surgeon, and whether there would be adverse impacts on other resources from an additional appointment to the Division of Ophthalmology. The panel considered the recent surgical hires at Richmond Hospital to be an important consideration in use of the OR time and possible adverse impacts if another surgeon was brought on. In this case, the panel found it was more likely than not that there were complicating factors over the past two years which increased the amount of unused OR time. One of those factors, lack of anesthesiology, had resolved and it was probable that there would be considerable uptake in OR time with the new surgeon hires coming up to speed.

Finally, the panel found that in the event that a future vacancy should arise in the Division of Ophthalmology, a further search and selection process should be conducted.

Appeal Decision: **http://www.hab.gov.bc.ca/final_dec/2015ha003b_2016ha001a.pdf**

Matters Outstanding at end of Period

There were 2 matters outstanding at the end of this reporting period, each of which is currently with a panel of the board for adjudication. Decisions on the merits of the outstanding matters will be issued and summarized in the next reporting period.

Performance Indicators and Timelines

Section 59.2(b) and (d) of the *Administrative Tribunals Act* requires the Board to report on performance indicators, and provide details of the time from filing to decision of matters disposed of by the Board in the reporting period.

The appeal process, although very similar to a court process, has been designed to be faster and more efficient and cost effective than if these important and complex matters were heard by the court. Appeals are full "hearings de novo" and are primarily conducted in person with a three person panel. During the course of an appeal the Board often deals a number of complex preliminary issues, including legal challenges to the Board's jurisdiction as well as document disclosure and evidentiary issues.

The Board generally tries to have a lawyer act as panel chair, who may, when delegated by the Chair, determine any interim or preliminary issues in the appeal, with two side panelists at the hearing who have medical or hospital administrative experience to ensure the appropriate expertise on the panel to deal with the issues arising on the merits of the appeal.

For those 32 appeals closed within this reporting period, the overall average time from the date of filing an appeal to its final disposition was 242 days, or approximately 8 months. The shortest time from open to close was 208 days and the longest was 681 days. For those matters resolved without a hearing, the average time was 215 days. For those appeals requiring a hearing on the merits, the average time from filing to disposition was 499 days or approximately 16 months.

The Board's Practice Directive #1, which is available on the Board's website, provides that the Board will endeavour to issue a copy of the final decision or order, including written reasons, to each party within a range of three to nine months from the close of the hearing, depending on the length of the hearing. For matters where the hearing is conducted in writing or the total number of hearing days to complete the appeal is two days or less, the final decision will generally be released within three months. For matters where the total number of days to complete the appeal is three to five days, the final decision will generally be released within six months of the close of the hearing. Finally, in those matters where the hearing requires six or more days to complete, the decision will generally be issued within nine months of the conclusion of the hearing.

Performance Indicators and Timelines (continued)

In this reporting period the Board met those timelines in 50 % of the appeals that required a hearing and adjudication on the merits. The final decisions in the two cases adjudicated within this reporting period were issued in 86 days and in 217 days of the close of submissions.

Finally, section 59.2(e) of the *Administrative Tribunals Act* requires the Board to report the results of any surveys carried out by the Board during the reporting period. The Hospital Appeal Board did not conduct any surveys during this reporting period.

Judicial Review of HAB Decisions

There were no decisions rendered by the Supreme Court of British Columba on judicial review of any HAB decisions issued in this reporting period. It is extremely rare that a decision of the HAB is the subject of an application for judicial review, with the last one being 24 years ago.

Statement of Financial Performance

(For the fiscal year ended March 31, 2017)

In fiscal year 2016/2017, the HAB incurred expenses of $238,868 as detailed below in this six year chart, made up primarily of board member fees and expenses. The expenditures for this reporting period reflect the larger than usual number of appeals dealt with during this reporting period (28 new appeals and 6 carried over from last year), as well as the increased complexity of the issues, number of preliminary matters and the length of the oral hearings held.

Direct Expenses	***2011/2012 $***	***2012/2013 $***	***2013/2014 $***	***2014/2015 $***	***2015/2016 $***	***2016/2017 $***
Salaries and Benefits	0	0	0	0	0	0
Board Member Fees & Expenses	24,167	21,923	28,268	9,000	20,163	168,560
Professional Services	7,160	5,327	5,808	0	753	29,163
Office and venue Expenses	1,649	2,247	1,162	191	688	41,115
Other	27	30	27	30	30	30
Total HAB Expenses	$33,003	$29,527	$35,265	$9,221	$21,634	**$238,868**