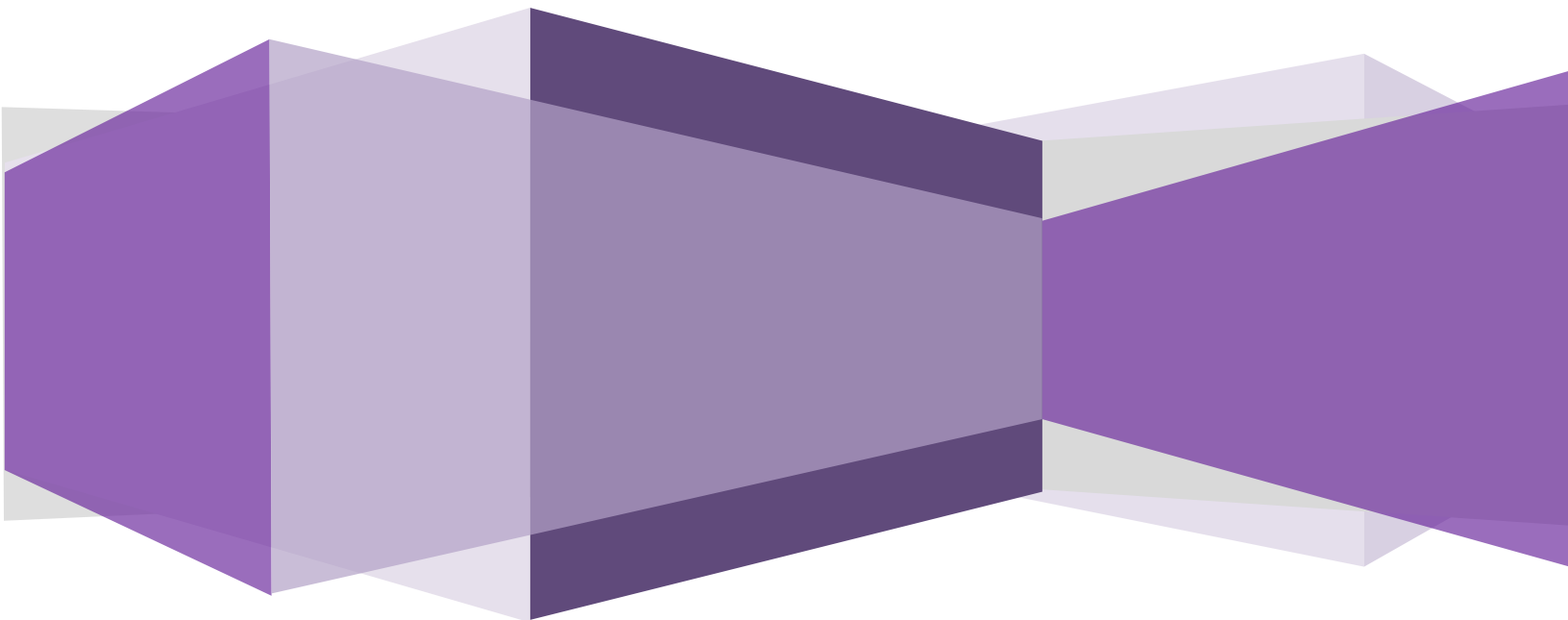




Hospital Appeal Board

2022-2023 Annual Report

Covering the reporting period from
April 1, 2022 – March 31, 2023





Hospital Appeal Board

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December 1, 2023

Honourable Niki Sharma, K.C.
Attorney General
Victoria, British Columbia V8V 1X4

Dear Attorney General:

Re: Hospital Appeal Board 2022-2023 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, 2022 to March 31, 2023.

Sincerely,

Stacy F. Robertson
Chair, Hospital Appeal Board

Encl.

Message from the Chair

I am pleased to submit the Annual Report of the Hospital Appeal Board (the “Board” or the “HAB”) for the fiscal year beginning April 1, 2022 and ending March 31, 2023. This report is submitted pursuant to section 59.2 of the *Administrative Tribunals Act*.

OPERATIONS 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.

There were a total of 13 appeals before the Board during the reporting period. This number includes 10 new appeals filed, and two appeals carried over from the previous reporting period. There was also one appeal that was disposed of through a final decision in the previous reporting period and which was reopened in the current reporting period through an application related to implementation of the Board’s order. Further details relating to these appeals are provided later in this report pursuant to section 59.2(c) of the *Administrative Tribunals Act*.

Of the 13 appeals before the Board during this reporting period, three appeals were closed. One appeal was closed as a result of a final decision, one appeal was closed as a result of a post-hearing decision, and one appeal was withdrawn. One of these three closed appeals was subsequently reopened by an application relating to implementation of the Board’s order. As a result, a total of 11 appeals remain outstanding at the end of the reporting period. Eight of those 11 outstanding appeals are currently held in abeyance by agreement of the parties.

During this reporting period, there were no new applications filed in the BC Supreme Court for judicial review of decisions issued by the Board.

FORECAST OF WORKLOAD FOR THE NEXT REPORTING PERIOD & 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. Based on the higher than usual number of new appeals filed in the current reporting period (10 new appeals, rather than the usual one to four appeals), the Board’s workload for the forthcoming 2023/2024 reporting period is expected to be higher than usual.

Section 59.2(g) of the *Administrative Tribunals Act* requires the Board to report any trends or special problems it foresees. The main trend that the Board has identified in this reporting period, as with the previous reporting periods, is the complexity and length of appeals over the past several years.

The Board has found it difficult at times over the past several years to provide timely hearings for the increasingly long and complex appeals. As discussed in earlier annual reports, this is because it has been difficult for the Board to recruit and retain members who are available to sit on hearings that take place over several weeks. The membership of the Board consists

largely of experienced health care practitioners, administrators and lawyers who have busy practices and who often find it difficult and financially impractical to set aside large periods of time for attendance at hearings. These individuals are selected for membership on the Board on the basis of their expertise and high standing in their respective fields.

In order to maintain the high calibre of the professionals who currently sit on the Board, it may be necessary to provide greater incentives for members attending lengthy hearings; for example, greater overall member compensation, particularly for Panel chairs who are tasked with adjudicating complex legal issues; and also, financial compensation for hearings which are cancelled last-minute. Low per diem compensation creates a disincentive for Members with other employment to sit on long hearings as it removes the ability for them to earn significant portions of their regular income. For example, a lawyer who may bill \$300-500 per hour in her legal practice must give up five weeks of pay to sit on a Hospital Appeal Board panel where she will be compensated \$470 per day instead (rates effective April 1, 2023).

In addition, the Board has noted an increase in the number of post decision applications, particularly regarding implementation of the Board's decisions. Where the health authority's decision is affirmed, there is little to deal with after the Board's decision. However, where the Board grants the appeal and reinstates the Appellant, there are more complicated steps that need to be taken and applications related to this are becoming more complex and resulting in re-openings and longer total appeal times. The Board will conduct an evaluation of whether the current processes are working for post decision implementation and whether additional processes or statutory powers are required.

PLANS FOR IMPROVING THE BOARD'S OPERATIONS

Section 59.2(h) of the *Administrative Tribunals Act* requires the Board to report its plans for improving operations in the future.

During the current reporting period, the Board rolled out its new website (www.bchab.ca) and updated its rules and practice directives. This included developing specific practice directives on Recording of Hearings and Ordering Transcripts and Electronic Hearing Practice and Procedure.

The HAB also updated its decision template and has begun to post its decisions to CanLII, in addition to on the HAB website which increases public awareness of decisions as CanLII is free decision reporting web-based service.

Ongoing work will be done to improve the accessibility of the information that is available to the public on the Board's website, and the Board will provide an update on these initiatives in its next report.



Stacy F. Robertson
Chair, Hospital Appeal Board

Mandate

The HAB 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 one to two 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 hearings typically taking between 3 and 5 weeks, sometimes spread over several months, to complete. Parties to the proceedings are almost always represented by experienced legal counsel.

The Board has broad remedial authority, and may 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.bchab.ca.

Contact Information

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TELEPHONE:	250 387-3464	WEBSITE:	http://www.bchab.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 of British Columbia¹;
- e) one member selected from among 3 or more individuals nominated by the British Columbia College of Nurses and Midwives;
- f) one member selected from among 3 or more individuals nominated by the executive body of the Association of Doctors of BC²; and
- g) four other members selected after a merit based process.

¹ Since September 1, 2022, the College of Dental Surgeons of BC has been amalgamated with the BC College of Oral Health Professionals.

² The Association of Doctors of BC is more commonly known as Doctors of BC and was formerly known as the British Columbia Medical Association. It is a voluntary association of physicians, residents, and medical students.

During this reporting period, the HAB membership consisted of the following individuals:

<i>BOARD MEMBER</i>	<i>ROLE</i>	<i>INITIAL APPOINTMENT</i>	<i>TERM EXPIRY/ RESIGNATION</i>
Stacy Robertson	Chair	October 28, 2014	December 31, 2028
Catherine Sullivan	Vice Chair	January 17, 2022	January 17, 2024
Dr. Kevin Doyle (College of Dental Surgeons ³ Nominee)	Member	October 28, 2014	December 31, 2024
Sharleen Dumont	Member	January 17, 2022	January 17, 2024
Darlene (Deanie) Kolybabi	Member	November 6, 2018	May 5, 2025
Dr. Ailve McNestry (College of Physicians and Surgeons Nominee)	Member	June 15, 2021	June 30, 2028
Dr. R. Alan Meakes (Doctors of BC Nominee)	Member	June 30, 2019	June 30, 2026
Anita Molzahn	Member	February 1, 2021	June 4, 2028
Sandra J. Pullin (College of Nurses and Midwives Nominee)	Member	December 31, 2019	December 31, 2026
Cheryl Vickers	Member	March 1, 2016	March 11, 2024

BIOGRAPHIES OF BOARD MEMBERSHIP

STACY ROBERTSON (CHAIR)

Stacy Robertson is currently Senior Enforcement Counsel at the Investment Industry Regulatory Organization of Canada. Previously he worked as an associate and partner at several Vancouver based firms practicing in the areas of insurance, construction, employment, labour and administrative law. Mr. Robertson has appeared before all courts in B.C., before the B.C. Labour Relations Board, the Canadian Industrial Relations Board and the B.C. Securities Commission. Active in his community, he is currently the Chair of the Hospital Appeal Board of B.C. and the Financial Services Tribunal of B.C. Previously, Mr. Robertson served as a member on the Employment Assistance Appeal Tribunal and the Eligibility Appeals Committee for B.C. School Sport. He has completed the Partners, Directors and Officers course through the Canadian Securities Institute. Mr. Robertson holds a Bachelor of Law from the University of New Brunswick, a Bachelor of Commerce

³ See footnote 1.

from McMaster University and a diploma from Moscow State University in Political History of Russia and the U.S.S.R.

CATHERINE SULLIVAN (VICE CHAIR)

Catherine Sullivan is a Lawyer. Prior to being self-employed, Ms. Sullivan was a Mediator with the BC Human Rights Tribunal. Active in her community, she is a member of the Property Assessment Review Panel and was previously a member with the Civil Resolution Tribunal. Ms. Sullivan is a member with the Law Society of BC, Canadian Bar Association and the Alternate Dispute Resolution Institute of BC. She has the Chartered Mediator designation from the Alternate Dispute Resolution Institute of British Columbia. Ms. Sullivan holds a Bachelor of Laws from the University of British Columbia, a Master of Social Work and a Bachelor of Arts from Dalhousie University.

DR. KEVIN DOYLE

Kevin Doyle is sole proprietor of Dr. Kevin Doyle Incorporated. He is actively involved in his community serving as an Assessment Invigilator/Evaluator for the National Dental Examining Board of Canada. Previously he served as an examiner for the National Dental Examining Board of Canada and the College of Dental Surgeons of British Columbia. Dr. Doyle is a Fellow of the American College of Dentists, the International College of Dentists and the Pierre Fauchard Academy. 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. Dr. Doyle holds a Doctor of Dental Medicine from the University of British Columbia and a Bachelor of Science (Chemistry) from the University of Victoria.

SHARLEEN DUMONT

Sharleen Dumont recently retired from her role as Staff Lawyer with the Law Society of British Columbia. Previously Ms. Dumont was Senior Legal Counsel at the Vancouver Fraser Port Authority and Partner with Alexander, Holburn, Beaudin & Lang. Active in her community, she is a Vice Chair of the Complaints Investigation Committee of the Law Society of Yukon. She obtained her law degree from the University of Victoria and holds a Bachelor of Arts in Economics from the University of Calgary.

DARLENE (DEANIE) LYNN KOLYBABI

Deanie Kolybabi is the President/Owner of Panache Media Consultants. She is the past Executive Director of EAGLE (Environmental-Aboriginal Guardianship through Law & Education) and the past Interim CEO of the National Aboriginal Achievement Foundation. In addition, she has held contracts with the Aboriginal Peoples Television Network, and the Women's Television Network. Ms. Kolybabi is Co-Founder of the Strategic Alliance of Broadcasters for Aboriginal Reflection (SABAR) and within her community, she is involved with the Health Aboriginal Network. She is the former Director of the Surrey Manufactured Homeowners Association and the Past President and Spokesperson for the Seacrest

Residents' Association. Ms. Kolybabi is a member of the White Rock/Surrey Chamber of Commerce.

DR. AILVE MCNESTRY

Ailve McNestry was born in Sri Lanka and spent her early childhood in Nigeria. Dr. McNestry retired from medical practice in 2018 following over 40 years in the medical profession. During her career she was the Deputy Registrar, Health Monitoring & Drug Programs for the College of Physicians & Surgeons of BC, the Manager of Medical Services for WorkSafeBC and a family physician in Vancouver. Active in her community she volunteers for her local Health Centre Foundation Board and as a COVID immuniser. Dr. McNestry holds a Medical Degree from the University College in Dublin, Ireland, and she interned at Memorial University in Newfoundland, Canada.

DR. R. ALAN MEAKES

Dr. Alan Meakes was a Physician with qualifications in general practice, military medicine, and specialist medicine involving Anesthesia, internal medicine, and critical care. Previously Dr. Meakes was Executive Medical Director for Island Health. Active in his community, he was a Member of the Working Group for Physician Compensation, Specialist Services Committee Expression of Interest Review Committee and Medical On-Call Availability Program Provincial Review Committee. Dr. Meakes holds certification in both Anesthesia and Internal Medicine and is a Fellow of the Royal College of Physicians of Canada (FRCPC). He holds a Doctorate in Medicine from the University of British Columbia.

DR. ANITA MOLZAHN

Anita Molzahn has over 45 years experience as a nurse, professor and academic administrator. Prior to her retirement she was a professor and the Dean, Faculty of Nursing at the University of Alberta; professor and the Dean, Faculty of Human and Social Development and the Director of the School of Nursing at the University of Victoria. Dr. Molzahn has been actively involved in her community as a Member of the Canadian Academy of Health Sciences, International Advisory Board Member for the VID Specialized University in Norway and a Member of the Research and Scholarly Activities Committee for the Canadian Association of Schools of Nursing. She is a registered nurse with the British Columbia College of Nursing Professionals and the College and Association of Registered Nurses of Alberta. Dr. Molzahn is a Member of the Order of Canada and a Fellow of the Canadian Academy of Health Sciences. She holds a Doctorate in Sociology, Master of Nursing and a Bachelor of Science in Nursing from the University of Alberta.

SANDRA PULLIN

Sandy Pullin is a Registered Midwife and has been a practicing midwife since 1978. Previously Ms. Pullin was a Registered Nurse with Queen Charlotte General Hospital. She has also traveled as a midwife in Nunavut, Uganda and Haiti for short terms. Active in her community, she was a Board Member with the College of Midwives of B.C. and an appointed Member of the Midwifery Regulation Advisory Committee for the Government

of Alberta. Ms. Pullin served as an Inquiry Panel Member for the College of Midwives of B.C., a Founding Member and Treasurer for the Alberta Association of Midwives and was the Founding President for the Association for Safe Alternatives in Childbirth. She holds a Certificate in Advanced Practical Obstetrics from the University of Alberta and a Diploma in Nursing from Grant MacEwan Community College.

CHERYL VICKERS

Cheryl Vickers is a retired lawyer and long-time member of the administrative law community. She is Vice Chair of the Surface Rights Board and has previously served as Chair of that Board, Chair of the Property Assessment Appeal Board, and Acting Chair of the Civil Resolution Tribunal. Ms. Vickers holds a Bachelors Degree from Dalhousie University in Halifax, Nova Scotia as well as a Bachelors of Law from University of Victoria.

Operations

Effective December 1, 2004, the administrative support functions of the HAB were consolidated with the Environmental Appeal Board/Forest Appeals Commission Appeals Office (the “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;
- Skilled Trades BC Appeal Board⁴; and the,
- Oil and Gas Appeal Tribunal⁵.

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 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.

⁴ Formerly the Industry Training Appeal Board and renamed as of December 1, 2022.

⁵ This was the name of the Tribunal during the current reporting period. It has since been renamed the Energy Resource Appeal Tribunal, as of September 1, 2023.

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.

Appeal Activity and Decisions Issued

There were a total of 13 appeals before the Board during the reporting period. This number includes 10 new appeals filed and two appeals carried over from the previous reporting period. There was also one appeal that was disposed of through a final decision in the previous reporting period which was reopened in the current reporting period through an application related to implementation of the Board's order.

NEW APPEALS FILED

- **HAB-HA-22-A002, FILED AUGUST 23, 2022** - Appeal from the May 25, 2022 decision of the Island Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges.
- **HAB-HA-22-A003, FILED AUGUST 24, 2022** - Appeal from the May 26, 2022 decision of the Fraser Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges.
- **HAB-HA-22-A004, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022 decision of the Interior Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges.
- **HAB-HA-22-A005, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022 decision of the Interior Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges.
- **HAB-HA-22-A006, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022 decision of the Interior Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges.
- **HAB-HA-22-A007, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022 decision of the Interior Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges.
- **HAB-HA-22-A008, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022 decision of the Interior Health Authority Board of Directors to cancel the Appellant's medical staff appointments and privileges.

- **HAB-HA-22-A009, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022 decision of the Interior Health Authority Board of Directors to cancel the Appellant’s medical staff appointments and privileges.
- **HAB-HA-22-A010, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022 decision of the Interior Health Authority Board of Directors to cancel the Appellant’s medical staff appointments and privileges.
- **HAB-HA-22-A011, FILED OCTOBER 18, 2022** - Appeal from the August 23, 2022 decision of the Interior Health Authority Board of Directors to cancel the Appellant’s medical staff appointments and privileges.

BOARD DECISIONS

During the reporting period, **one** final decision on the merits was issued, and **two** preliminary decisions were published. ⁶ The Board also published **one** decision in response to an application made after a final decision.

FINAL DECISION ON THE MERITS

HAB-HA-20-A003(b)

Decision Date: December 7, 2022
Appellant: Dr. Malvinder Hoonjan
Respondent: Interior Health Authority (“IH”)
Decision Full Text: [Dr. Malvinder Hoonjan v. Interior Health Authority, 2022 BCHAB 4](#)
Summary: The Appellant, an ophthalmologist with a specialty in vitreo-retinal surgery, had active medical staff privileges at Royal Inland Hospital (“RIH”) and consulting privileges at Kelowna General Hospital (“KGH”). Originally, the only place in IH where vitreo-retinal surgery took place was RIH. When IH made the decision to relocate these surgeries to KGH, KGH undertook a search and selection process for vitreo-retinal surgeon positions at the hospital. There were two successful candidates, and the Appellant was not selected but was subsequently advised by management to make an unsolicited application for privileges at KGH. That application was denied, and the Appellant appealed to the HAB.

While IH argued that the only matter before the Panel was the unsolicited application for privileges and not the original application,

⁶ The Board issues numerous preliminary decisions on simple issues such as extensions of time. The Board only publishes and reports on preliminary decisions which are significant and of precedential value.

the Panel noted that the history of the Appellant’s treatment by IH was important in the context of the appeal. IH argued that there was no need for a third vitreo-retinal surgeon at KGH and that, if there was, this post should be filled through a formal and open recruitment process. The Panel disagreed and found that there was a need for a third vitreo-retinal surgeon and that there were resources available to support the position. The Panel found that its remedial discretion and authority was broad enough to allow it to order the appointment of the Appellant without an open recruitment process.

In determining whether the Appellant should be granted privileges, the Panel found that the Appellant’s privileges could have, and indeed should have, simply followed the relocation of the services from Kamloops to Kelowna and further found that the Respondent had failed to follow its own bylaws and provide basic procedural fairness to the Appellant in the cancellation of his privileges at RIH. Finally, the Panel found that the selection process for the positions at KGH was unfair and that the Appellant was treated differently from other physicians without adequate explanation.

Disposition: The appeal was allowed, and the Panel ordered that the parties had 60 days to reach a mutually agreeable reintroduction plan, subsequent to which the Panel granted the Appellant active medical staff privileges at KGH as a third vitreo-retinal surgeon with equal access to operating room time as the other two vitreo-retinal surgeons.

PRELIMINARY DECISIONS & DECISION ON IMPLEMENTATION

HAB-HA-22-A001(a)

Decision Date: July 22, 2022
Appellant: Dr. Saraswathi Vedam
Respondent: Provincial Health Services Authority (“PHSA”)
Decision Full Text: [*Dr. Saraswathi Vedam v. Provincial Health Services Authority, 2022 BCHAB 3*](#)
Summary: The Appellant is registered as a midwife with the BC College of Nurses and Midwives (the “College”). This decision arose out of an application for a stay of the decision of the PHSA to revoke the Appellant’s medical staff appointment and privileges at BC Women’s Hospital and Health Centre (“BC Women’s”). The revocation of the

Appellant’s privileges followed a patient-care incident. Simultaneously, the College conducted a review of the Appellant’s practice, and imposed certain conditions on her, but otherwise permitted her to continue with her practice.

After filing her appeal, the Appellant applied for a stay of the PHSA’s decision pending the resolution of the appeal. Her primary concern related to the currency requirements set by the College. Given the length of time she had been on leave, there was a legitimate concern that waiting until the appeal was complete would put her in jeopardy of being outside those requirements. It was also difficult for her to fulfill the final condition set by the College without privileges to practice at BC Women’s.

After reviewing the evidence, the Panel Chair determined that while he could not say there was no risk to patient safety, there was also some *prima facie* reason to question some of the findings and, given the temporary nature of the stay, safety concerns could be mitigated by imposition of conditions. In weighing the balance of convenience, the Panel Chair found that the irreparable harm to the Appellant’s practice by not granting the stay was significant and could limit or destroy her professional practice, whereas the risk of patient safety was capable of mitigation by the imposition of conditions.

Disposition:

The Panel Chair granted the stay and ordered that the Appellant’s privileges be temporarily reinstated so that she would be able to meet the conditions to maintain her license to practice with the College. The Panel Chair further ordered that after these conditions were met, the Appellant would continue to have her privileges at BC Women’s on certain conditions aimed at alleviating patient safety concerns pending the outcome of the appeal.

HAB-HA-22-A002(a)

- Decision Date:** February 3, 2023
- Appellant:** Dr. Christopher McCollister
- Respondent:** Vancouver Island Health Authority (“VIHA”)
- Decision Full Text:** [Dr. Christopher McCollister v. Vancouver Island Health Authority, 2023 BCHAB 1](#)
- Summary:** The Appellant is a pediatric generalist practicing in Port Alberni, who practices primarily in the community, but has also held hospital privileges at West Coast General Hospital (“WCGH”) since 1997. This

decision arose out of an application for a stay of a VIHA decision to revoke the appellant’s medical staff appointment and privileges at WCGH. The revocation arose out of the Appellant’s failure to get vaccinated against COVID-19 or seek or obtain an exemption from the requirement (imposed by the Provincial Health Officer through an Order dated October 14, 2021 (the “order”) that prohibited a health authority from permitting an unvaccinated person to exercise privileges in any health authority facility.

In weighing the balance of convenience, the Panel Chair found that it did not favour granting a stay. While the Appellant relied on evidence as to the likelihood of the order being lifted, the Panel Chair refused to speculate on this and noted that the analysis must be based on the current status of the order. Based on the existing order, it was clear that, even if the stay was granted, the Appellant could not exercise his privileges in the hospital. This in turn would create operational and administrative difficulties for the hospital to provide coverage and meet the needs of the patient population. In addition, the availability of a vacant position provided much needed operational funding through a provincial locum funding source that would not otherwise be available if the privileges were simply suspended.

Disposition: The Panel Chair dismissed the application for a stay pending a full hearing of the appeal.

HAB-HA-20-A001(d)

Decision Date: March 15, 2023
Appellant: Dr. Katherine Puchala
Respondent: Northern Health Authority
Decision Full Text: [*Katherine Puchala v. Northern Health Authority, 2023 BCHAB 2*](#)
Summary: The Appellant is registered as a midwife with the BC College of Nurses and Midwives (the “College”). On March 16, 2022, the HAB issued its final decision on the merits of the underlying appeal, which arose as a result of the Appellant being denied appointment to the Northern Health Medical Staff. The Panel ordered Northern Health to grant the Appellant provisional privileges at Mills Memorial Hospital (“MMH”) and Kitimat Hospital and Health Centre, subject to the Appellant completing, within a year, any requirements imposed by the College to reinstate her licence to provide intrapartum services. Subsequently, on March 6, 2023 the Appellant applied to the Board to

extend and amend its order to grant her privileges MMH so that she could complete a supervised practice within Northern Health.

Disposition:

The Panel found that it was without jurisdiction to substantively amend its order of March 16, 2022 to order that the Appellant be granted privileges at MMH without being licensed. However, the Panel granted the application in part, extending the time for the Appellant to complete any requirements of the College to reinstate her license from March 2023 to September 30, 2023.

Matters Outstanding at End of Period

Of the 13 appeals before the Board during this reporting period, three appeals were closed. One of these appeals was closed after a final decision, one appeal (which was previously closed in the preceding reporting period and then reopened) was closed after a post-hearing decision (HAB-HA-20-A001(d)), and one appeal was withdrawn.

The appeal that was closed after a final decision (HAB-HA-20-A003(b)) during the reporting period was subsequently reopened by an application relating to implementation of the Board's order and remained open. As a result, a total of 11 appeals remained outstanding at the close of the reporting period, eight of which are currently held in abeyance by agreement of the parties.

Judicial Review of HAB Decisions

During the reporting period, there were no new applications filed in the BC Supreme Court for judicial review of a decision issued by the HAB. There were also no HAB judicial review decisions issued by the Supreme Court.

Performance Indicators and Timelines

The HAB 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 with 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 an individual with legal training act as panel chair, who may, when delegated by the Chair, determine any interim or preliminary issues in the appeal. The Board then assigns two additional panelists for the hearing who have medical and/or hospital administrative experience to ensure there is appropriate expertise on the panel to deal with the issues arising on the merits of the appeal.

Section 59.2(b) and (d) of the *Administrative Tribunals Act* requires the Board to report on performance indicators and provide details of the elapsed time from filing to the date of final decision.

For the two appeals that were closed during the reporting period (not including the matter that was reopened after a final decision was issued in the previous reporting period), the average length of time from the Appellant filing their Notice of Appeal until close of the file was 432 days. The total length of one appeal was 729 days. This appeal involved extensive case management procedures and involved a pre-hearing application for document production, which decision was reported in the previous reporting period. The hearing proceeded to a multi-week hearing which was completed in this reporting period. The final decision (HAB-HA-22-A003(b)), which was also released in this reporting period, is summarized above. The length of the other appeal, which was withdrawn, was 135 days.

HAB Practice Directive No. 1, which is available on the Board's website, sets the timeframes the Board will target for 1) completion of hearings, and 2) issuing a final decision. With regards to timelines for the completion of hearings, the Practice Directive states that appeals will be processed as quickly as practicable, and within the following timelines:

- For matters where the total number of hearing days is 2 or less, the hearing will generally be completed within 4 months from the date that a Notice of Appeal is received by the Board.
- For matters where the total number of hearing days is 3, 4 or 5 days, the hearing will generally be completed within 6 months from the date that a Notice of Appeal is received by the Board.
- For matters where the total number of hearing days is 6 or more, the hearing will generally be completed within 9 months from the date that a Notice of Appeal is received by the board.

During the current reporting period, no matters proceeded to a hearing on the merits.

With regards to timelines for the issuance of final decisions with reasons, the Practice Directive states that the Panel will endeavour to provide the parties with its final decision and written reasons as soon as practicable after the completion of the hearing, and within the following timelines:

- For matters where the total number of hearing days is 2 or less, the final decision will generally be released within 3 months of the close of the hearing and receipt of all closing submissions.
- For matters where the total number of hearing days is 3, 4 or 5 days, the final decision will generally be released within 6 months of the close of the hearing and receipt of all closing submissions.
- For matters where the total number of hearing days is 6 days or more, the final decision will generally be released within 9 months of the close of the hearing and receipt of all closing submissions.

During the current reporting period, the Board issued one final decision with reasons (HAB-HA-22-A003(b)). This appeal required more than 14 hearing days due to lengthy oral arguments and evidence from multiple witnesses. The number of days between the close of submissions and final decision was 315 days, which fell outside of the target timeline due to length and complexity of the hearing.

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 Board did not conduct any surveys during this reporting period.

*Statement of Financial Performance**(For the fiscal year ended
March 31, 2023)*

In fiscal year 2022/2023, the Board incurred expenses of **\$88,950** as detailed below in this six-year chart, made up primarily of member fees and expenses.

<i>Direct Expenses</i>	<i>2017/2018</i> \$	<i>2018/2019</i> \$	<i>2019/2020</i> \$	<i>2020/2021</i> \$	<i>2021/2022</i> \$	<i>2022/2023</i> \$
Salaries and Benefits	0	0	0	0	0	0
Board Member Fees & Expenses	20,735	39,255	86,000	72,217	79,129	67,408
Professional Services	11,942	7,550	18,900	67,620	14,370	9,046
Office and Venue Expenses	5,905	8,478	26,259	11,072	14,092	12,496
Other	0	0	0	0	0	0
<i>Total HAB Expenses</i>	\$38,582	\$55,283	\$131,159	\$150,908	\$107,591	\$88,950