

**RULES OF PROCEDURE**  
**PUBLIC HEALTH APPEAL BOARD**

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## TABLE OF CONTENTS

<b>SECTION 1</b>	<b>INTRODUCTION .....</b>	<b>3</b>
1.1	Rules of Procedure .....	3
<b>SECTION 2</b>	<b>GENERAL.....</b>	<b>3</b>
2.1	Definitions.....	3
2.2	Powers of the PHAB .....	5
2.3	Precedent.....	6
2.4	Disclosure of Information and Privacy .....	6
2.5	Advice and Direction .....	6
<b>SECTION 3</b>	<b>PRE-HEARING PROCEDURES.....</b>	<b>7</b>
3.1	Notice of Appeal .....	7
3.2	Jurisdiction.....	8
3.3	Discontinuance and Adjournments of the Appeal.....	9
3.4	Preliminary Applications - General .....	9
3.5	Preliminary Applications - Stay Applications.....	11
3.6	Preliminary Applications - Applications to Dismiss Appeal on the Basis it is Moot.....	13
3.7	Preliminary Hearings .....	14
3.8	Disclosure .....	14
3.9	Notice of Hearing.....	15
3.10	Intervention .....	15
<b>SECTION 4</b>	<b>THE APPEAL HEARING.....</b>	<b>16</b>
4.1	The following section governs appeal hearings. However, in the discretion of the Presiding PHAB Member these or modified procedures may be used for hearing a Preliminary Procedural Application or Preliminary Application.....	16
4.2	Written Submissions .....	17
4.3	Venue .....	17
4.4	Swearing or Affirming of Evidence .....	18
4.5	Standard Procedure .....	18
4.6	Expert and Lay Witnesses.....	19
4.7	Admissibility of Evidence.....	20
4.8	Evidence: Written Testimony .....	21
4.9	Evidence: Cross-Examination.....	21
4.10	Burden of Proof.....	21
4.11	Failure to Provide Submissions.....	21
4.12	Costs.....	22
4.13	Appeal Decision.....	22

## SECTION 1 INTRODUCTION

### 1.1 Rules of Procedure

- 1.1.1 These are the Rules of Procedure of the Alberta Public Health Appeal Board (“**PHAB**”). The PHAB is an independent quasi-judicial tribunal, selected from a cross-section of Alberta citizens and having the authority under the Alberta *Public Health Act* (the “**Act**”) to hear appeals from a person who disputes a decision made by Alberta Health Services that directly affects them and who feels aggrieved by the decision. The Act sets out the formal requirements of an appeal and what the PHAB must do when it receives an appeal. In addition, the Act confers on PHAB all the powers of a commissioner under the *Public Inquiries Act*, R.S.A. 2000, c. P-39. The purpose of these Rules of Procedure is to specify how the PHAB will exercise its powers to deal with appeals.
- 1.1.2 The PHAB emphasizes that these procedures will be flexible. Matters will likely arise during the course of some proceedings which are not specifically addressed by these Rules of Procedure. In such a case, the PHAB will do whatever is necessary to enable it to deal with the appeal effectively and completely, including making an effective and complete decision. In addition, the PHAB may decide that compliance is not required with any part, or all, of a particular rule if in its opinion, the circumstances so require and in such a case, will issue specific directions. In all cases, the Act, and other relevant legislative and statutory provisions, must be complied with and will override these Rules of Procedure in case of any conflict.
- 1.1.3 The PHAB intends to use these Rules of Procedure to fulfill the spirit of the Act. Every reasonable effort will be made to process appeals in a timely fashion in accordance with the principles of natural justice. It is the expectation of the PHAB that all parties before it will cooperate in the discharge of this mandate.

## SECTION 2 GENERAL

### 2.1 Definitions

- 2.1.1 “Act” means the Alberta *Public Health Act*, R.S.A. 2000, c. P-37, as amended from time to time.
- 2.1.2 “Alberta Health Services” means the governing health authority in Alberta whose decisions are subject to appeal pursuant to the Act, and which is referred to as the “regional health authority” in the Act.
- 2.1.3 “Alternate Vice-Chair” means the Member elected as alternate vice-chair pursuant to section 3(4) of the Act.
- 2.1.4 “Appellant” means the person who appeals a decision of Alberta Health Services in accordance with the Act. As a matter of law in Alberta, the PHAB interprets a “person” to include a corporate entity.

- 2.1.5 “Board” or “PHAB” means the Alberta Public Health Appeal Board.
- 2.1.6 “Chair” means the Member designated as Chair pursuant to section 3(2) of the Act.
- 2.1.7 “Decision of the Regional Health Authority” means an order issued under section 62 of the *Public Health Act* (commonly titled or described as an Order of Executive Officer of Alberta Health Services), a decision to issue or to cancel, suspend or refuse to issue a license, permit or other approval provided for in the regulations, and any other decision in respect of which an appeal to the Board is permitted under the regulations, whether or not any of those decisions is made by the regional health authority itself or one of its employees or agents, and a decision pursuant to the *Exemption Regulation*, Alberta Regulation 351/2003 (hereinafter referred to as “Decision”).
- 2.1.8 “Disclosure” means the provision, by both the Appellant and Alberta Health Services, of all Relevant Records to the Board and to the other Parties to the appeal in accordance with these Rules of Procedure. This term refers only to evidence, not argument or submissions.
- 2.1.9 “Electronic device” means any device capable of transmitting and/or recording data, audio video or images, including smartphones, cellular telephones, cameras, video cameras or television equipment, audio recorders, computers, laptops, tablets, notebooks, personal digital assistants or other such devices.
- 2.1.10 “Expert Witness” means a witness who has specific qualifications to give opinion evidence about an area within their expertise. Normally, witnesses may only give evidence about the facts that they can speak to from personal knowledge (referred to as “lay” witnesses). In order to qualify as an Expert Witness and so give opinion evidence, the Party presenting that proposed Expert Witness must provide evidence of their qualifications (normally through a resume or curriculum vitae, and a written statement from the proposed Expert Witness).
- 2.1.11 “Intervenor” means a non-party to the appeal who otherwise has an interest in the issue(s) on appeal and who, in the discretion of the PHAB is allowed to participate in the appeal in a specified capacity, on the basis that the PHAB determines that this non-party can bring relevant evidence or submissions to the appeal that would not otherwise be available to the PHAB.
- 2.1.12 “Member” means a member of the Board appointed pursuant to section 3(1) of the Act. (Plural: Members).
- 2.1.13 “Notice of Appeal” means the prescribed form for commencing an appeal to the Board pursuant to section 5(3) of the Act, as maintained by the Secretariat and on the website of the Board.
- 2.1.14 “Party” means the Appellant or Alberta Health Services, or any other person designated as a Party to an appeal by the Board. (Plural: Parties).

- 2.1.15 “Preliminary Application” means an application for some form of relief which is intended to be heard in advance of the hearing of the appeal itself. (Plural: Preliminary Applications).
- 2.1.16 “Procedural Preliminary Application” is a specific subset of Preliminary Applications, and means a Preliminary Application whose outcome cannot be determinative of any appeal on its merits, but is intended to address an issue that will facilitate an appeal hearing in some fashion. (Plural: Procedural Preliminary Applications).
- 2.1.17 “Presiding PHAB Member” means the Member designated by the Act or the Board to chair or lead the conduct of a hearing of an appeal or an application.
- 2.1.18 “Public Place” means a public place as defined in the Act (section 2.1.1).
- 2.1.19 “Record of Proceedings” means all of the materials that were before, or available to, the Board in making its decision, including all Relevant Records, communications with the Parties respecting the appeal (including any applications), all written submissions received relating to the appeal, and any transcripts or recordings of oral evidence and argument at any hearings of applications or of the appeal itself.
- 2.1.20 “Relevant Record” means all documents, records, and any other evidence in a Parties’ possession or control that is relevant to the issues under appeal, even if such document, record or other evidence is unfavorable to that Parties’ position on appeal.
- 2.1.21 “Secretariat” means the administrative support staff of the Board.
- 2.1.22 “Vice-Chair” means the Member designated as vice-chair pursuant to section 3(2) of the Act.

## **2.2 Powers of the PHAB**

- 2.2.1 The PHAB has all the powers necessary to conduct a fair, expeditious, and impartial hearing of an appeal, including but not limited to the following:
- To issue subpoenas authorized by law;
  - To administer oaths and affirmations;
  - To rule on the admissibility and relevance of evidence;
  - To require full disclosure of evidence necessary to address appeals before the Board fully and fairly;
  - To regulate the course of hearings before it, and the conduct of persons at such hearings;
  - To require the attendance, either in person or via telephone conference, at any meeting of at least one representative of the Appellant and one representative

of Alberta Health Services having authority to make commitments in regard to procedural matters;

- To hear and make decisions regarding all types of Preliminary Applications and Procedural Preliminary Applications;
- To call and question witnesses;
- Where authorized by law, to impose any appropriate sanctions against any Party or person failing to obey an order of the PHAB, refusing to adhere to reasonable standards of orderly and ethical conduct, or refusing to act in good faith;
- To make decisions on matters within the scope of its statutory authority, including motions brought by the PHAB on its own initiative; and
- To take any other action authorized by, or exercise the powers of a commissioner under, the *Public Inquiries Act*, RSA 2000, c. P-39.

## **2.3 Precedent**

2.3.1 The PHAB recognizes that it is granted, pursuant to the Act, significant discretionary powers. The PHAB further recognizes that the appeals before it are highly fact-specific. Accordingly, the PHAB must decide each case before it individually, based on the material before the PHAB in that particular case. The PHAB recognizes that over time, its prior decisions have developed into a useful benchmark which may indicate how the PHAB will view particular types of cases. However, the PHAB is required to decide each case on its own merits.

## **2.4 Disclosure of Information and Privacy**

2.4.1 All information provided to the PHAB during the course of an appeal is public. As a quasi-judicial tribunal, the PHAB is unable to have communications with, or accept information from, Parties to proceedings before it which are not shared with the other Parties to that proceeding.

2.4.2 Hearings before the PHAB are public unless the Presiding PHAB Member specifically directs otherwise. Decisions of the PHAB are public.

2.4.3 As a public agency of the Government of Alberta, the PHAB acknowledges that it is subject to the Alberta *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25. However, the PHAB understands that its deliberations are exempt from the application of that statute.

## **2.5 Advice and Direction**

2.5.1 Parties to proceedings before the PHAB may, if appropriate, make application to the PHAB for advice and direction on specific issues or items not otherwise addressed in these Rules of Procedure.

## **2.6 Operating Days**

- 2.6.1 The PHAB operates on all days on which the Government of Alberta and its employees operate. On any day on which Government of Alberta offices are closed, the PHAB is not operational.
- 2.6.2 Notices of Appeal received by the PHAB on non-operational days are deemed as received on the actual day received, not the next PHAB operational day.

## **SECTION 3 PRE-APPEAL HEARING PROCEDURES**

### **3.1 Notice of Appeal**

- 3.1.1 A person who is directly affected by a Decision of Alberta Health Services, and who feels himself or herself aggrieved by that Decision, may appeal in accordance with the Act.
- 3.1.2 A Notice of Appeal is to be prepared in the form as available on the website of the PHAB. A person who wishes to appeal but does not have access to the website of the PHAB can contact the Secretariat to obtain the Notice of Appeal form.
- 3.1.3 The Notice of Appeal should contain, at minimum, the following information:
- 1) The date upon which the Appellant received oral or written notice of the Decision;
  - 2) If the Notice of Appeal is provided to the PHAB more than 10 calendar days from the date upon which the Appellant received oral or written notice of the Decision, a reasonable explanation for the delay;
  - 3) A list of the specific particulars that the Appellant disputes with the Decision and reasons for the Appellant's dispute. Outline in detail each repair, description, characterization or other by Alberta Health Services, that is in dispute; and
  - 4) The specific remedy or relief which the Appellant wishes the Board to order.
- 3.1.4 A person who wishes to appeal may be represented by a lawyer, who may sign the Notice of Appeal on behalf of their client, the Appellant. An Appellant who wishes to be assisted by a non-legal agent such as a friend or family member may receive that assistance in preparing the Notice of Appeal and any other written submissions, and may have that person present at any hearings during the course of the appeal to provide support and assistance as well as make submission on behalf of the Appellant. However, the Appellant still personally sign the Notice of Appeal.

- 3.1.5 An Appellant must serve the PHAB and Alberta Health Services with a Notice of Appeal in the prescribed form by no later than the tenth (10<sup>th</sup>) calendar day after the day on which the Appellant became aware of the written Decision which they wish to appeal, unless an oral Decision was issued pursuant to section 62(5), in which case an Appellant must serve the PHAB and Alberta Health Services with a Notice of Appeal in the prescribed form by no later than the tenth (10<sup>th</sup>) calendar day after the day on which the oral Decision was given.
- 3.1.6 The occupants (other than owner) of a Public Place which is the subject of a Decision for which a Notice of Appeal has been filed, will be notified of the Notice of Appeal. However, if the occupants do not respond to the notification of the Notice of Appeal and specifically request to be provided notice of further developments in the appeal, the Secretariat will not provide further particulars of the appeal to the occupants.
- 3.1.7 The PHAB expects that Appellants will be reasonably diligent. To that end, Appellants who appear to be actively seeking to avoid service of the Decision, or who decline to accept registered mail, for example, may be deemed to have been served with the Decision whether or not they have actually read it.
- 3.1.8 The Notice of Appeal is sufficiently served on both the PHAB and Alberta Health Services if it is served on either one of them. Service on the PHAB may be achieved in any of the following ways:

By Email:	By Fax:	By Personal Delivery:	By Registered Mail:
<a href="mailto:HealthAppealBoard@gov.ab.ca">HealthAppealBoard@gov.ab.ca</a>	780-422-0914	Public Health Appeal Board  c/o Central Reception Main Floor, ATB Place North 10025 Jasper Avenue NW  Edmonton, AB T5J 1S6	Public Health Appeal Board  c/o Central Reception Main Floor, ATB Place North 10025 Jasper Avenue NW  Edmonton, AB T5J 1S6

## 3.2 Jurisdiction

- 3.2.1 The jurisdiction of the PHAB is limited by the Act to appeals to address grievances with Decisions made by Alberta Health Services.

- 3.2.2 The PHAB is not empowered to deal with questions of constitutional law. To that end, complaints of violations of rights under either the *Canadian Charter of Rights and Freedoms* or the *Alberta Bill of Rights* are not within the jurisdiction of the PHAB. Notices of Appeal relying on such grounds will be dismissed, or those particular grounds will not be addressed by the PHAB.
- 3.2.3 The PHAB will also not accept appeals from parties that are not affected by the Decision under appeal. In other words, if the appeal has no direct effect on the Appellant, then the PHAB will not hear that person's appeal as they would not have standing to appeal the Decision in question.
- 3.2.4 Further, the nature of the conduct of the Alberta Health Services Executive Officer who made the decision under appeal is generally not relevant to the PHAB's jurisdiction, unless the conduct of the Executive Officer impacted the discharge of his or her duties. Appeals that only raise dissatisfaction with the Executive Officer's behaviour will not generally be accepted as within the jurisdiction of the PHAB.

### **3.3 Discontinuance and Adjournments of the Appeal or Other Hearings**

- 3.3.1 At any time before the commencement of the hearing of the appeal, the Appellant may withdraw their Notice of Appeal by providing confirmation of their intention to withdraw to the Secretariat in writing.
- 3.3.2 The PHAB has the discretion to consider an appeal withdrawn if a Party fails to attend a hearing after being given reasonable notice in accordance with these Rules of Procedure and any statutory requirements.
- 3.3.3 If a Party is more than 15 minutes late for their scheduled hearing without having provided notice in advance to the PHAB, the PHAB may exercise its discretion to either reschedule the hearing, or may consider the appeal abandoned if the hearing was for the appeal itself.
- 3.3.4 Any Party may request an adjournment of the hearing of the appeal by way of Procedural Preliminary Application. Such application will be determined at the discretion of the Chair, Vice-Chair or Alternate Vice-Chair hearing the Procedural Preliminary Application for an adjournment.

### **3.4 Preliminary Applications - General**

- 3.4.1 Pursuant to the PHAB's powers under the Act and the *Public Inquiries Act*, the PHAB has passed a motion delegating to the Chair, Vice-Chair, or Alternate Vice-Chair, the ability, at the discretion of the Chair, to hear and decide all Procedural Preliminary Applications without requiring the full PHAB, or a quorum of PHAB Members, to be convened. This is in recognition of the narrow timeframe within which the PHAB must operate, as well as the often expedited timeframes that are required due to the nature of the issues under appeal. This authority granted to the

Chair, Vice-Chair, or Alternate Vice-Chair is limited to addressing Procedural Preliminary Applications.

- 3.4.2 On receipt of a Procedural Preliminary Application, the Secretariat shall give notice of the Procedural Preliminary Application to all Parties to the appeal, who shall be given a reasonable period of time to provide a response indicating whether they support or oppose the Procedural Preliminary Application.
- 3.4.3 The motion referenced in Rule 3.4.1 includes applications for a stay pending the hearing of an appeal (addressed in Rule 3.5).
- 3.4.4 Notwithstanding Rule 3.4.1, the Chair, Vice-Chair, or Alternate Vice-Chair, retains the discretion to require a quorum of the PHAB to hear a Procedural Preliminary Application where the Chair, Vice-Chair, or Alternate Vice-Chair deems that appropriate in the circumstances.
- 3.4.5 A non-exhaustive list of examples of Procedural Preliminary Applications, brought by the Parties or the PHAB, include the following:
- An application to adjourn a hearing of an appeal, Preliminary Application, or Procedural Preliminary Application;
  - A preliminary application to narrow the issues before the Board on appeal;
  - An application for advice and direction pursuant to Rule 2.5;
  - An application to direct any Party to produce documents in its possession relevant to the appeal (as required by Rule 3.8);
  - An application by any Party to extend the time for production of documents;
  - An application to change the venue pursuant to Rule 4.2;
  - An application to have a hearing, or part of a hearing, conducted by teleconference or videoconference; or
  - An application for third party intervention (addressed in Rule 3.10).
- 3.4.6 In contrast, applications to dismiss the appeal for lack of jurisdiction, being filed out of time, or mootness (addressed under Rule 3.6), would be a non-exhaustive list of examples of Preliminary Applications, brought by the Parties or the PHAB, that would require a full quorum of the PHAB to address, as these applications could potentially be dispositive of the entire appeal.
- 3.4.7 In the discretion of the Presiding PHAB Member, all Preliminary Applications may be addressed in any of the following ways:
- by written submissions;
  - by teleconference or videoconference, or

- by in-person hearing.
- 3.4.8 The process for making a Preliminary Application is that the Party seeking the direction or relief in question must provide a written application, signed by the Parties or their lawyer, and serve that on the PHAB, and may serve it on Alberta Health Services and any other Party to the original appeal proceeding. An application must contain at least the following:
- a written and signed statement setting out the reasons, basis or grounds for the application, along with the remedies that are sought;
  - all documentary evidence that the Party making the application intends to rely on in support of the application;
  - a written indication of any other, non-documentary, evidence, that the applicant may wish to provide, including a list of any witnesses and the evidence they are expected to give.
- 3.4.9 The process which the PHAB will follow at the hearing of any Preliminary Application will generally be the same as the process for the hearing of an appeal as outlined in Section 4, but may be modified as necessary in the discretion of the Presiding PHAB Member.
- 3.4.10 Where a Procedural Preliminary Application is heard by the Chair, Vice-Chair, or Alternate Vice-Chair alone, the Chair, Vice-Chair or Alternate Vice-Chair may, in their discretion, deliver oral reasons for their decision at the conclusion of the hearing rather than reserving their decision and later issuing a written decision. In the case where oral reasons for decision are delivered at the conclusion of the hearing of the Procedural Preliminary Application, the Chair, Vice-Chair or Alternate Vice-Chair is not required to also provide written reasons; although the nature of the decision made will be confirmed by correspondence from the Secretariat in all cases to provide a written record of that decision. However, on any Preliminary Application heard by a panel of the PHAB, the decision of the PHAB will be issued in writing.

### **3.5 Preliminary Applications - Stay Applications**

- 3.5.1 It is important for Appellants to understand that merely serving an appeal does not relieve them of the obligation to comply with the decision they are appealing.
- 3.5.2 An Appellant may ask Alberta Health Services to extend the date by which any steps required to be taken under a Decision must be completed.
- 3.5.3 If the Appellant does not wish to comply with the decision, or if the decision requires things to be done prior to the date of the appeal hearing, or if Alberta Health Services declines to extend the date for completion of any required steps, then the Appellant must bring an application to the PHAB seeking to stay the operation of the decision pending the hearing of the appeal. The onus of proof in such an

application lies on the Appellant, who must provide evidence of each of the required factors. A stay application will be heard and decided by the Chair, Vice-Chair, or Alternate Vice-Chair. In addressing such an application, the Chair, Vice-Chair, or Alternate Vice-Chair will have regard to the following factors:

- Is there a serious issue to be tried? This is not a difficult or high threshold for the Appellant to meet. The Appellant must simply show that there is some real, genuine issue to be brought forward at the hearing of the appeal. If the Appellant can show one issue that the PHAB would consider at the hearing of the appeal, then this element is discharged.
- Secondly, the Appellant must show “irreparable harm” would arise if the stay is not granted. Irreparable harm is harm which cannot be adequately compensated by monetary damages. In the case of appeals to the PHAB, as no monetary recourse against Alberta Health Services is available, the Chair, Vice-Chair, or Alternate Vice-Chair will be prepared to review evidence of financial impact from a Decision under appeal and consider whether this might amount to “irreparable harm”.
- The balance of convenience must weigh in favour of granting the stay. In this regard, the Chair, Vice-Chair, or Alternate Vice-Chair will review evidence of the impact of complying with the decision on the Appellant, and weigh that against the impact of allowing the circumstances which gave rise to the decision under appeal to continue. The Chair, Vice-Chair, or Alternate Vice-Chair must determine that there would be greater potential for inconvenience or harm from not granting the stay, as opposed to granting it, before finding this element weighs in favour of the application for a stay.
- The final element, which is generally combined with the third element in the analysis, is the public interest. The Chair, Vice-Chair, or Alternate Vice-Chair must consider what the public interest is in maintaining the decision, as opposed to granting the stay. As an example, the Chair, Vice-Chair, or Alternate Vice-Chair may find that the decision under appeal has a significant public health or safety component such that it would not be appropriate to stay it.

3.5.4 Upon receipt of an application for a stay, the Chair has three options. The Chair may:

- Make an immediate order staying the decision appealed;
- Immediately dismiss the application for a stay; or
- Decide that a hearing of the stay application is required.

3.5.5 If the Chair, Vice-Chair, or Alternate Vice-Chair decides that a hearing of the stay application is required, then the Chair may issue directions on the procedure for hearing the stay application, including requiring written submissions from the parties and any other interested persons, on whether or not a stay should be granted. These directions may include requirements relating to service of copies of the written submissions, the procedure for exchange of written submissions including

any opportunity to reply, and requirements for filing those submissions, as well as procedures for a hearing by teleconference, video conference or in person.

- 3.5.6 After the conclusion of the hearing of the stay application, the Chair, Vice-Chair or Alternate Vice-Chair may reserve their decision and later issue written reasons that either stay the decision appealed or dismiss the application for a stay. Alternatively the Chair, Vice-Chair, or Alternate Vice-Chair may give oral reasons for their decision immediately at the conclusion of the hearing, which decision will then be confirmed in writing by the Secretariat.

### **3.6 Preliminary Applications - Applications to Dismiss Appeal on the Basis it is Moot**

- 3.6.1 Subsequent to receipt of an appeal, Alberta Health Services may rescind an appealed Decision for reasons including but not limited to, compliance with the Decision by the Appellant. Alberta Health Services may bring before the PHAB an application to dismiss the appeal on the grounds that it is moot.

- 3.6.2 An application to dismiss an appeal on the basis it is moot will affect the ultimate appeal, therefore this application must be heard by a quorum of the PHAB.

- 3.6.3 In considering whether an appeal is moot the PHAB shall consider the following factors:

- 1) Whether an adversarial relationship exists between the Appellant and AHS. This requires consideration as to the Appellant's reasons for compliance with the Decision. For example, if the decision was complied with due to agreement with the citations in the Decision, no adversarial relationship will exist between AHS and the Appellant.
- 2) If compliance was in an attempt to mitigate the Appellant's losses as a result of the Decision, and the validity of the Decision remains disputed, an adversarial relationship will exist, which is a factor in favor of the PHAB hearing a moot appeal.

- 3.6.4 If no adversarial relationship remains, then generally and absent extraordinary circumstances, the adequacy of which is solely within the discretion of the PHAB, the PHAB will dismiss the appeal.

- 3.6.5 If an adversarial relationship remains, the PHAB shall consider the following factors to determine whether it should exercise its discretion to hear a moot appeal:

- 1) Whether its decision on the appeal will have some practical effect on the rights of the Parties.
- 2) Whether the issue on appeal is of a recurring nature and brief duration.

- 3) Whether the issue on appeal is of a national or societal importance.
- 3.6.6 The PHAB will review all applications for dismissal on the basis of mootness on a case by case basis. Except in extraordinary circumstances, the PHAB will generally decline to hear moot appeals.
  - 3.6.7 The above noted guidelines are not an exhaustive list of considerations or factors which may be before the PHAB on any given appeal. However, application of these guidelines will assist the Board in maintaining consistency in its decisions to hear or not hear, moot appeals.

### **3.7 Preliminary Hearings**

- 3.7.1 Upon receipt of an appeal, the PHAB may determine that the issues to be addressed at the hearing of the appeal, including the grounds of appeal, are not clear enough to allow for either appropriate document production, or to allow the PHAB to effectively decide the matter. In such a case, the PHAB may direct that a preliminary hearing occur before the Chair, Vice-Chair or Alternate Vice-Chair to specifically address the grounds of appeal which will be heard by the PHAB at the hearing of the appeal. This may include, but is not limited to, addressing whether or not the grounds advanced are within the jurisdiction of the PHAB.
- 3.7.2 As indicated, although the PHAB will determine whether or not a preliminary hearing is required, if one is directed, it may be heard by the Chair, Vice-Chair or Alternate Vice-Chair.
- 3.7.3 Preliminary hearings may be addressed, in the discretion of the Chair, Vice-Chair or Alternate Vice-Chair hearing the matter, in the same manner as any Preliminary Application.

### **3.8 Disclosure**

- 3.8.1 No later than ten (10) calendar days in advance of the date of the appeal hearing, Alberta Health Services is required to provide Disclosure to the PHAB and to the Appellant. Such evidence is to be provided electronically by email if possible, while arrangements are to be made with the Secretariat in respect of any evidence not capable of transmission by email. In cases where Alberta Health Services is unable to comply with this time requirement, Alberta Health Services may make written application to the PHAB for additional time to provide the Disclosure, which written application will be addressed by the Chair, Vice-Chair, or Alternate Vice-Chair, pursuant to the Procedural Preliminary Application process set forth under Rule 3.4.
- 3.8.2 No later than ten (10) calendar days in advance of the date of the appeal hearing, the Appellant is required to provide Disclosure to the PHAB and to Alberta Health Services. Such documents are to be provided electronically by email if possible, while arrangements are to be made with the Secretariat in respect of any evidence not capable of transmission by email. If the Appellant does not have access to

email, then a hard copy of documentary evidence may be delivered to the PHAB which will arrange to provide the material to Alberta Health Services. In cases where the Appellant is unable to comply with this time requirement, the Appellant may make written application to the PHAB for additional time to provide the Disclosure, which written application will be addressed by the Chair, Vice-Chair, or Alternate Vice-Chair, pursuant to the Procedural Preliminary Application process set forth under Rule 3.4.

3.8.3 For the purposes of calculation of deadlines, if a deadline falls on a weekend or holiday, then the applicable day is the first business day before that weekend or holiday.

### **3.9 Notice of Hearing**

3.9.1 The Secretariat will canvass the availability of the Appellant and Alberta Health Services prior to issuing a Notice of Hearing.

3.9.2 The Notice of Hearing will be issued to all relevant parties by email a reasonable time in advance of the hearing. If a Party does not have access to email, the Secretariat is empowered to make reasonable alternate arrangements.

3.9.3 The Notice of Hearing shall contain the following information:

- The date, time, and place of the hearing;
- A list of the grounds of appeal listed in the Notice of Appeal, subject to any clarification of issues that the PHAB may have obtained from the Appellant;
- The mailing address, fax number, and email address of the PHAB; and
- Any other matter the PHAB deems relevant.

### **3.10 Intervention**

3.10.1 The PHAB's process is such that Intervenors are rarely contemplated. The rights of the Parties to the appeal process are determined by the Act and any other applicable laws, and these Rules of Procedure. However, the PHAB acknowledges that it is possible that a non-party to the appeal, might be interested in intervening in an appeal before it. To that end, the PHAB is prepared to entertain applications for intervention, following the same general process, with any necessary modifications, that applies to Procedural Preliminary Applications set forth in Section 3.4.

3.10.2 Requests for intervention must be in writing and contain the name, address, email and fax number (if available), and telephone of the person submitting the request, along with an indication as to whether the person submitting the request intends to be represented by a lawyer or agent, and if so, all applicable contact information for that lawyer or agent. The written request must contain a summary of the nature of the person's interest in the subject matter of the Notice of Appeal, and the

signature of the person submitting the request or their lawyer and must be submitted to the Secretariat no later than two (2) weeks before the scheduled hearing date.

- 3.10.3 Where the PHAB receives such a request in writing, it shall determine whether the person submitting the request should be allowed to make representations in respect of the subject matter of the Notice of Appeal.
- 3.10.4 As a general rule, those persons or groups wishing to intervene must provide evidence of each of the following:
- Their participation will materially assist the PHAB in deciding the appeal, by providing testimony, cross-examining witnesses, or offering argument or other evidence directly relevant to the appeal;
  - The proposed Intervenor has a tangible interest in the subject matter of the appeal;
  - The intervention will not unnecessarily delay the appeal;
  - The proposed Intervenor in the appeal is substantially supporting or opposing the appeal such that the PHAB may know the designation of the Intervenor as to whether they are likely to assist the Appellant or Alberta Health Services;
  - The intervention will not repeat or duplicate evidence presented by other parties; and
  - If the intervention request is late, there are documented and sound reasons why the intervenor did not file earlier seeking such status.
- 3.10.5 On receipt of an application for intervention, the Secretariat shall give notice of the application to all Parties to the appeal, who shall be given a reasonable period of time to provide a response indicating whether they support or oppose the application.
- 3.10.6 When the PHAB makes its determination as to whether or not the person submitting the request is allowed to appear as an Intervenor, it shall give that person and the Parties written notice of the decision. In the discretion of the PHAB, persons who may have been entitled to participate as a Party, but failed in a timely fashion to avail themselves of the opportunity to do so, may be denied intervention rights. Further, the PHAB will advise the Intervenor as to the nature and scope of their participation rights. For example, the PHAB may choose to limit the rights of participation of an Intervenor to written submissions only.

## **SECTION 4 THE APPEAL HEARING**

- 4.1** The following section governs appeal hearings. However, in the discretion of the Presiding PHAB Member these or modified procedures may be used for hearing a Preliminary Procedural Application or Preliminary Application.

## **4.2 Written Submissions**

- 4.2.1 Every Party to an appeal may file a written submission (that is, a summary of the arguments they intend to present with reference to the evidence they have provided or intend to present at the hearing) with the PHAB. Any Party wishing to file a written submission must deliver a copy to the PHAB and may provide a copy to every other party, at least three (3) calendar days before the date of the hearing, or by whatever date is set out by the PHAB.
- 4.2.2 A written submission shall contain:
- A summary of the facts and evidence to be relied upon by the Party, with reference to the evidence already provided under the Disclosure process above;
  - A list of witnesses to be called by the Party, along with a summary of each witness's evidence;
  - If the Party intends to call an expert witness to give opinion evidence, a copy of that expert witness' resume or curriculum vitae and a summary of their expected evidence;
  - A summary of the argument that the Party intends to present to the Board; and
  - The name, address, email, and telephone and fax numbers of any lawyer or other agent acting on behalf of the Party.

## **4.3 Venue**

- 4.3.1 Normally, any in-person hearing will be held in the community where the property impacted by the Decision under appeal is located. Any Party may make the Procedural Preliminary Application to change the venue, in accordance with Rule 3.4 of these Rules of Procedure.
- 4.3.2 In the PHAB's discretion, hearings may be held by teleconference or video conference. However, as a general rule, the PHAB holds final hearings in person, although Preliminary Applications are generally addressed by teleconference.
- 4.3.3 Parties cannot use any Electronic Devices in the hearing room during hearings without the PHAB's consent. Electronic devices must be turned off and kept out of sight during the hearing.
- 4.3.4 Legal counsel, instructing Parties and self-represented Parties are permitted to use Electronic Devices for the purpose of assisting in the presentation of their case to the PHAB, so long as the device is in silent mode, is not disruptive to the hearing, and is not used to record or photograph the proceedings.
- 4.3.5 The PHAB will record the entire proceedings. That recording will not be made available to the Parties unless a judicial review of the PHAB's decision is commenced (see Rule 4.13.4). In that case, the PHAB will retain a professional court reporter to prepare a written transcript of the recording, which transcript will

form part of the PHAB's Record of Proceedings filed in the judicial review proceedings.

#### **4.4 Swearing or Affirming of Evidence**

4.4.1 Evidence may be given to the PHAB either by swearing an oath, or on affirmation.

4.4.2 As a general matter, the PHAB does not require evidence to be sworn or affirmed except as part of in-person hearings of the appeal.

#### **4.5 Standard Procedure**

4.5.1 The Presiding PHAB Member will introduce the members of the PHAB and identify the Decision being appealed.

4.5.2 The Presiding PHAB Member will ask the Parties whether they have any objection to the constitution of the PHAB, or to its jurisdiction to hear the appeal.

4.5.3 In the discretion of the Presiding PHAB Member, parties may be allowed to commence a hearing with a brief opening statement which describes the issues that that Party will address at the hearing. If permitted, such a statement should include an outline of the evidence the Party intends to introduce, a list of witnesses, the topics to be covered, and the amount of time required. If permitted, the Appellant will make the opening statement first, followed by any other parties, followed by Alberta Health Services.

4.5.4 Unless directed otherwise by the Presiding PHAB Member, the evidence at a hearing shall be presented by the Parties in the following order:

- 1) The Appellant;
- 2) Any other Parties or Intervenors whose interest or position is, in the opinion of the PHAB, similar to that of the Appellant;
- 3) Alberta Health Services;
- 4) Any other Parties whose interest or position is, in the opinion of the PHAB, similar to that of Alberta Health Services;
- 5) The Appellant, in rebuttal.

4.5.5 At the close of the hearing, and upon such terms that the PHAB may find reasonable, any Party to the proceedings shall be entitled, subject to the PHAB's discretion, to file a written brief, propose findings of fact and conclusions of law, or do both.

- 4.5.6 Regardless of whether or not written closing arguments are permitted, at the close of the appeal hearing, the Presiding PHAB Member will provide each Party with an opportunity to make closing remarks.
- 4.5.7 Any written or oral closing argument will be included as part of the PHAB's Record.
- 4.5.8 At the conclusion of the appeal hearing, the Record of Proceedings shall be closed unless the Presiding PHAB Member directs otherwise. Once the Record of Proceedings is closed, no additional evidence shall be accepted unless the PHAB decides the evidence is material, and that there was good cause for the failure to produce it during the hearing.
- 4.5.9 The Presiding PHAB Member shall reflect in the Record of Proceedings any correction to the transcript that is approved by the PHAB.
- 4.5.10 Further to Rule 4.11.1, any decision by the PHAB to accept closing written submissions after the date of the hearing shall not be considered to be reopening a closed hearing.
- 4.5.11 The Presiding PHAB Member will then call the hearing to an end.

## **4.6 Expert and Lay Witnesses**

- 4.6.1 In hearings, the PHAB does not normally formally qualify a witness as an Expert Witness, but any witness with a degree of specialized knowledge should reference that knowledge, provide a resume or curriculum vitae, and may seek to establish that specialized knowledge as helpful to a particular appeal. Further, any Party may challenge the qualifications of any witness having technical or special knowledge, either before or during the course of that witness's testimony.
- 4.6.2 Resumes or curricula vitae will be filed with the PHAB a reasonable period of time, and in any event no later than three (3) calendar days (subject to the discretion of the PHAB), prior to the hearing at which a witness with technical or special knowledge is proposed to be brought forward.
- 4.6.3 The PHAB, in its discretion, will determine the weight to be given to each witness's testimony, in relation to which the witness's qualifications and experience will be a factor. However, the fact that evidence is deemed admissible does not mean that it will be determinative of any particular issue.
- 4.6.4 If any Expert Witness or lay witness is expected to attend, or clearly has relevant evidence which cannot be provided directly by any other witness, but that witness is not called by a Party with the ability to do so, on the application of a Party the PHAB may in its discretion draw an adverse inference, meaning that it will be assumed that the evidence of the Expert Witness or lay witness who failed to attend would have been adverse, or detrimental, to the Party who could have but failed to call that witness. The PHAB will not draw an adverse inference on its own motion.

4.6.5 The PHAB is empowered under the Act to retain its own experts to assist in relation to any appeal.

#### **4.7 Admissibility of Evidence**

4.7.1 The PHAB is not bound by the rules of evidence applicable to common law courts.

4.7.2 Notwithstanding Rule 4.7.1, as a general principle the Presiding PHAB Member shall admit any relevant oral or documentary evidence that is not privileged. Relevant evidence means evidence having a tendency to make the existence of any fact that is of consequence to the determination of the appeal more or less probable than it would have been without the evidence.

4.7.3 The Presiding PHAB Member may, however, exclude evidence if its probative value (the matter that it is providing proof of) is substantially outweighed by any of the following:

- The danger of unfair prejudice;
- Confusion of the issues; or
- Considerations of undue delay, waste of time, or needless presentation of repetitious evidence.

4.7.4 Although the PHAB does not strictly follow the rules of evidence, Parties should be aware that the PHAB gives little weight to “hearsay” evidence. Hearsay evidence is evidence of what someone else said, that is offered on the basis that what that person said is true. In other words, the statement of a person not giving evidence at the hearing is put forward as proof that what they said actually happened, as opposed to proof merely that the person made the statement.

4.7.5 In all cases, the PHAB will determine the appropriate weight to give to any evidence, whether hearsay or otherwise, on the basis of the facts and circumstances before it. The PHAB’s evidentiary determinations are made on a case-by-case basis and are not precedential nor binding on any future decisions.

4.7.6 The Presiding PHAB Member may limit introduction of evidence, or issue protective or other orders which in their judgment are required to prevent undue disclosure of classified, confidential, or sensitive matters. Where the Presiding PHAB Member determines that information and documents containing classified, confidential, or sensitive matters should be made available to another Party to the appeal, the Presiding PHAB Member may direct that Party to prepare an unclassified or non-sensitive summary or extract of the original, which summary or extract may be admitted as evidence in the Record of Proceedings. If the Presiding PHAB Member determines that this procedure is inadequate, but that classified or otherwise sensitive matters must form part of the Record of Proceedings in order to avoid prejudice to a Party, the Presiding PHAB Member may advise the parties and provide an opportunity for arrangements to permit a Party or their lawyer to have access to such material.

#### **4.8 Evidence: Written Testimony**

- 4.8.1 The Presiding PHAB Member may, in their discretion, accept written testimony in lieu of oral evidence where there is evidence presented that such is necessary for compelling reasons, such that the witness is unable to attend to provide evidence in person.
- 4.8.2 The Presiding PHAB Member may also, in their discretion, allow any witness to testify by teleconference or videoconference if satisfied that in the circumstances the witness is unable to attend the hearing in person and their evidence is necessary. This discretion will only be exercised in extraordinary circumstances and the usual process is for a witness to give evidence in person.

#### **4.9 Evidence: Cross-Examination**

- 4.9.1 Cross-examination refers to the questioning, under oath or affirmation, by a Party of the other Party's witnesses, after those witnesses have already provided their direct evidence or "evidence in chief".
- 4.9.2 Unlike evidence in chief, where it is not appropriate to ask leading questions (that is, questions which suggest the answer), cross-examination questions should always be leading in nature, if possible.
- 4.9.3 Cross-examination is limited to the scope of the direct evidence and, subject to the discretion of the Presiding PHAB Member, is limited to those witnesses whose testimony is adverse to the Party cross-examining.
- 4.9.4 Notwithstanding Rule 4.9.3, the Presiding PHAB Member may, in his or her discretion, permit an inquiry into additional matters as if on direct evidence, if the circumstances are appropriate.

#### **4.10 Burden of Proof**

- 4.10.1 Any Party offering evidence shall have the burden of introducing appropriate evidence to support its position. Where there is conflicting evidence, the PHAB will decide which evidence to accept. Generally, the PHAB will act on the preponderance of the evidence. However, the PHAB retains the discretion to reject the credibility of a particular witness, which may affect its assessment of the preponderance of the evidence.

#### **4.11 Failure to Provide Submissions**

- 4.11.1 Where a Party has been given notice in accordance with these Rules of Procedure and any statutory requirements of a Preliminary Application hearing or an appeal hearing, and that Party does not attend the Preliminary Application hearing or appeal hearing, the PHAB may proceed in that Party's absence and that Party is not entitled to any further notice of that application or appeal unless the PHAB decides otherwise.

- 4.11.2 Unless excused by the PHAB for good cause, failure of a Party to attend a proceeding after being served with reasonable notice of the time and place of that proceeding shall be deemed to constitute a waiver by that Party of all objections to the agreements reached, and rulings made, in the proceeding.
- 4.11.3 Where the PHAB has required written submissions for a Preliminary Application, or in the case of hearing of an appeal, Disclosure, and a Party does not provide those written submissions or Disclosure by the deadline set by the Board, the Board will make a decision on the matter without reference to any written submissions or Disclosure from that Party.

#### **4.12 Costs**

- 4.12.1 The PHAB does not have the jurisdiction to award costs to any Party, and will not entertain applications for costs.

#### **4.13 Appeal Decision and PHAB's Reasons**

- 4.13.1 After the close of the hearing and receipt of any written closing submissions, the PHAB Members who conducted the hearing will confer and reach a decision. In the event that the decision is not unanimous, the majority decision will govern. In the event that the PHAB Members are unable to reach a majority decision, the decision of the Chair will govern.
- 4.13.2 The decision of the PHAB on the appeal will be communicated to the Parties either orally by the Presiding PHAB Member at the conclusion of the appeal hearing, or following the hearing in writing by the Secretariat. The PHAB may in its discretion elect to initially communicate only its appeal decision, with detailed reasons to follow. In that case, the date of the communication of the appeal decision is the commencing date for calculating the period of time in which any Party may commence a judicial review of the PHAB's appeal decision.
- 4.13.3 The PHAB's reasons for its appeal decision will be written, and communicated to the Parties, in accordance with the Act. In addition, the PHAB's written reasons will be made available online through the PHAB's website.
- 4.13.4 The PHAB's decision is final and may not be appealed. However, as with all decision-making tribunals in Alberta, decisions of the PHAB remain subject to the oversight jurisdiction of the Court of Queen's Bench of Alberta through the mechanism of judicial review pursuant to the Alberta Rules of Court. Any Party dissatisfied with the PHAB's decision on appeal may seek to judicially review that decision in accordance with the timelines and procedures provided for in the Alberta Rules of Court. Parties should be aware that those timelines and procedures are strictly adhered to.