



RULES OF PROCEDURE

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1. INTRODUCTION

1.1 Rules of Procedure

- 1.1.1 These are the Rules of Procedure of the Alberta Public Health Appeal Board (the “PHAB”). The PHAB is an independent quasi-judicial tribunal having the authority under the Alberta *Public Health Act*, R.S.A. 2000, c. P-37 (the “Act”) to hear appeals from a person who disputes a Decision (see Definitions section below) made by Alberta Health Services (see Definitions section below) that directly affects them and who feels aggrieved by the Decision.
- 1.1.2 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 the PHAB all the powers of a commissioner under the *Public Inquiries Act*, R.S.A. 2000, c. P-39. The purpose of the Rules of Procedure is to specify how the PHAB will exercise its powers to deal with appeals.
- 1.1.3 The PHAB emphasizes that the Rules of Procedure will be flexible as issues may arise during some proceedings that are not specifically addressed by the Rules of Procedure. In that case, the PHAB will do whatever is necessary to enable it to deal with the issue effectively and render a decision. In addition, the PHAB may decide that following any, all, or part, of a particular rule need not be done if, in its opinion, the circumstances so require. In such a case, the PHAB will issue specific directions. In all cases, the Act, and other relevant legislative and statutory provisions, must be complied with and will override the Rules of Procedure in case of any conflict.
- 1.1.4 The PHAB intends to use the Rules of Procedure to fulfill the spirit and intent 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.

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” or “AHS” means the governing health authority in Alberta whose decisions are subject to appeal to the PHAB pursuant to the Act.
- 2.1.3 “Appellant” means the person who appeals a Decision of AHS in accordance with the Act.
- 2.1.4 “Decision” means an order issued under section 62 of the Act (commonly called an “Order of an Executive Officer of AHS” or “Order”), or 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 PHAB 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.
- 2.1.5 “Disclosure” means the provision, by both the Appellant and AHS, of all documents, records, and any other evidence in a Party’s possession or control

that is relevant to the issues under appeal to the PHAB and to the other Parties to the appeal in accordance with the Rules of Procedure. This term refers only to evidence, not argument or submissions.

- 2.1.6 “Electronic Device” means any device capable of transmitting and/or recording data, audio, video or images, including smartphones, cellular telephones, cameras, video cameras, audio recorders, computers, laptops, tablets, notebooks or other such devices.
- 2.1.7 “Executive Officer of AHS” means an official designated or authorized by AHS to issue Orders pursuant to the Act and includes public health inspectors.
- 2.1.8 “Expert Witness” means a person who is permitted by the PHAB to give evidence at a hearing because of special knowledge or proficiency in a particular field that is relevant to the case.
- 2.1.9 “Grounds of Appeal” means a written list of specific items that the Appellant disputes with the Decision and the reasons for each of the Appellant’s disputes.
- 2.1.10 “Intervenor” means a non-party to the appeal who otherwise has an interest in the issue(s) being appealed and who the PHAB, in its discretion, allows to participate in the appeal in a specified capacity.
- 2.1.11 “Lay Witness” means a person who provides oral or written evidence about their first-hand knowledge about what they heard, saw, said or did.
- 2.1.12 “Moot” or “Mootness” means the lack of any actual controversy or dispute between the Parties, and as a result, any ruling by the PHAB would have no practical effect. Mootness may arise before or after the initiation of the appeal or Preliminary Application.
- 2.1.13 “Notice of Appeal” means the prescribed form for launching an appeal to the PHAB pursuant to section 5(3) of the Act, as maintained by the PHAB Secretariat and on the website of the PHAB.
- 2.1.14 “Order” means an Order of an Executive Officer of AHS (also referred to as a “Decision” see 2.1.4).
- 2.1.15 “Panel” means the members of the PHAB assigned to hear an appeal or Preliminary Application.
- 2.1.16 “Party” (plural “Parties”) means the Appellant or AHS, or any other person designated as a Party to an appeal by the PHAB.
- 2.1.17 “PHAB” means the Alberta Public Health Appeal Board.
- 2.1.18 “Preliminary Application” means an application for some action that is intended to be heard in advance of the hearing of the appeal itself.
- 2.1.19 “Presiding PHAB Member” means the person designated by the Act or the PHAB, to chair or lead a hearing of an appeal or Preliminary Application.
- 2.1.20 “Record of Proceedings” means all the materials that were before, or available to, the PHAB in making a decision associated with the appeal.
- 2.1.21 “Regulations” refer to the regulations, standards and codes relevant under the Act. Including the Food Regulation and Food Retail and Food Services Code; Housing Regulation and Minimum Housing and Health Standards; Institutions Regulation, Nuisance and General Sanitation Regulation, Personal Services Regulation and Personal Services Standards; Public Swimming Pools Regulation and Pool Standards; Recreation Area Regulation; Work Camps

Regulation; and Waiver Regulation.

- 2.1.22 “Stay” means that the action required to be completed in the Decision will be suspended until a hearing of the appeal is complete and a decision issued by the PHAB.
- 2.1.23 “Written Submissions” means a summary of the arguments the Party intends to present, including reference to the evidence they have provided or intend to present, at a hearing or at the request of the PHAB when considering and addressing a Preliminary Application.

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:
 - a. to decline to hear an appeal if an order has been rescinded prior to a Notice of Appeal being served;
 - b. to hear and make decisions regarding all types of Preliminary Applications;
 - c. to require the attendance at any meeting, either in person or via videoconference or teleconference, of at least one representative of the Appellant and one representative of AHS who has the authority to make commitments regarding procedural matters;
 - d. to require full disclosure of materials necessary to address appeals before the PHAB fully and fairly;
 - e. to regulate the course of hearings before it, and the conduct of persons at such hearings;
 - f. to rule on the admissibility and relevance of evidence;
 - g. to call and question witnesses;
 - h. to make decisions on matters within the scope of its statutory authority, including motions brought by the PHAB on its own initiative;
 - i. to issue subpoenas authorized by law;
 - j. 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; and,
 - k. to take any other action authorized by, or exercise the powers of, a commissioner under the *Public Inquiries Act*, R.S.A. 2000, c. P-39.

2.3 Precedent

- 2.3.1 The PHAB recognizes that it is granted, pursuant to the Act, significant discretionary powers.
- 2.3.2 The PHAB recognizes that over time, its prior decisions have developed into a useful benchmark which may indicate how the PHAB will view certain types of appeals.
- 2.3.3 The PHAB further recognizes that the appeals before it are highly fact specific and accordingly, the PHAB must decide each appeal before it on an individual basis, based on the Record of Proceedings.

2.4 Disclosure of Information and Privacy

- 2.4.1 All information provided to the PHAB during the course of an appeal process 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 Alberta's *Access to Information Act* and *Protection of Privacy Act*. However, the PHAB understands that its deliberations are exempt from the application of *Access to Information Act*.

3. APPEAL PROCEDURE

3.1 Notice of Appeal

- 3.1.1 A person who is directly affected by a Decision and who feels themselves aggrieved by that Decision, may appeal in accordance with the Act.
- 3.1.2 A Notice of Appeal is to be prepared using the form available on the website of the PHAB, or the person who wishes to appeal the Decision can contact the PHAB to obtain the Notice of Appeal form.
- 3.1.3 The Notice of Appeal should contain, at minimum, the following information:
 - a. the date upon which the Appellant received notice of the Decision;
 - b. the Grounds of Appeal clearly indicating the items that the Appellant disputes with the Decision and the reasons for each of the Appellant's disputes;
 - c. if the Notice of Appeal is provided to the PHAB more than ten (10) calendar days from the date upon which the Appellant received notice of the Decision, a reasonable explanation for the delay;
 - d. the specific outcome that the Appellant requests from the PHAB; and
 - e. whether or not a Stay of the Decision is sought and, if it is, the reasons why a Stay would be appropriate.
- 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.
- 3.1.5 An Appellant who wishes to be assisted by a non-legal person, such as a friend or family member, may receive that assistance in preparing the Notice of Appeal and any other Written Submissions. They may have that person present at any hearings to provide support and assistance and/or speak on behalf of the Appellant.
- 3.1.6 If the Appellant or the Appellant's lawyer submits the Notice of Appeal electronically and/or in a way that the Appellant cannot physically sign the Notice of Appeal, the PHAB has the discretion to accept that Notice of Appeal when the PHAB is satisfied that the Notice of Appeal is authentic.
- 3.1.7 An Appellant must serve a Notice of Appeal in the prescribed form to the PHAB and AHS by no later than the 10th calendar day after the day the Appellant became aware of the Decision they want to appeal.

- 3.1.8 The Notice of Appeal is served on both the PHAB and AHS if it is served on either one of them. Service on the PHAB may be achieved in any of the following ways:

Email:	HealthAppealBoard@gov.ab.ca
Personal Delivery	Public Health Appeal Board c/o Central Reception Main Floor, ATB Place North 10025 Jasper Avenue NW Edmonton, AB T5J 1S6
Registered Mail	Public Health Appeal Board c/o Central Reception Main Floor, ATB Place North 10025 Jasper Avenue NW Edmonton, AB T5J 1S6
Fax:	780-422-0914 If possible, please follow up faxed submissions with a telephone call to the PHAB Secretariat (780-222-5186)

3.2 Jurisdiction

- 3.2.1 The jurisdiction of the PHAB is limited by the Act to appeals to address disputes with Decisions made by AHS.
- 3.2.2 The PHAB will not accept appeals from parties that are not affected by the Decision.
- 3.2.3 The PHAB cannot deal with questions of constitutional law since 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 those grounds will be dismissed, or those specific grounds will not be addressed by the PHAB.
- 3.2.4 The conduct of the AHS Executive Officer who made the Decision is generally not relevant to the PHAB's jurisdiction. Appeals that only raise dissatisfaction with the Executive Officer's behaviour will not generally be accepted by the PHAB.

3.3 Withdrawal, Abandonment and Adjournments of the Appeal or Other Hearings

- 3.3.1 At any time after a Notice of Appeal is served on the PHAB, the Appellant may withdraw their appeal by providing written confirmation to the PHAB that they want to withdraw.
- 3.3.2 The PHAB has the sole discretion, acting reasonably, to consider an appeal abandoned if the Appellant:
- fails to attend a hearing after being given reasonable notice in accordance with the Rules of Procedure and any statutory requirements; or,
 - fails to respond to a second attempt by the PHAB to obtain information from the Appellant that the PHAB deems necessary, for example, availability for a

hearing, or other relevant information.

- 3.3.3 Where a Party has been given notice of a Preliminary Application hearing or an appeal hearing in accordance with the Rules of Procedure and any statutory requirements and does not attend the hearing, the PHAB, in its discretion, may proceed in that Party's absence.
- 3.3.4 If a Party does not attend a Preliminary Application hearing or an appeal hearing after being served with reasonable notice of the time and place of that hearing, the Party will lose their right to object to the agreements reached and decisions made in the hearing.
- 3.3.5 If a Party is more than 15 minutes late for their scheduled hearing without providing reasonable advance notice to the PHAB, the PHAB may:
 - a. for a Preliminary Application,
 - i. exercise its discretion to proceed without that Party;
 - ii. reschedule the Preliminary Application; or,
 - iii. consider the Preliminary Application abandoned; and,
 - b. for an appeal hearing,
 - i. reschedule the hearing; or,
 - ii. consider the appeal abandoned.
- 3.3.6 Any Party may make a Preliminary Application to request an adjournment of the hearing of the appeal, or the hearing of any Preliminary Application. The Presiding PHAB Member will use their discretion to either allow or deny the adjournment request.

3.4 Preliminary Applications: General

- 3.4.1 Any Party may make Preliminary Applications to the PHAB. A non-exhaustive list of examples of Preliminary Applications, which may be brought by a Party or by the PHAB, include applications to:
 - a. accept a Notice of Appeal served beyond the 10-days required in the Act;
 - b. stay a Decision;
 - c. dismiss an appeal or a Preliminary Application on the basis that it is Moot;
 - d. adjourn a hearing of the appeal or Preliminary Application;
 - e. narrow the Grounds of Appeal;
 - f. determine if the Grounds of Appeal are within the PHAB's jurisdiction;
 - g. direct any Party to produce documents in its possession relevant to the appeal;
 - h. extend the time for production of documents;
 - i. request an in-person hearing;
 - j. include an Intervenor and any conditions on the Intervenor's participation; or
 - k. any other applications the PHAB determines are relevant.
- 3.4.2 The Party seeking the direction or relief in question must provide a written Preliminary Application, signed by the Party or their lawyer, and serve the Preliminary Application on the PHAB, AHS and any other Party to the appeal. A Preliminary Application must contain at least the following:

- 3.4.3 a written statement setting out the reasons why the Preliminary Application has been made, and the outcome that is sought;
 - a. all documentary evidence that the Party making the Preliminary Application intends to rely on in support of the Preliminary Application; and
 - b. a list of any other non-documentary evidence, and any witnesses and the evidence those witnesses are expected to give.
- 3.4.4 When the PHAB receives a Preliminary Application, all Parties will be notified and given reasonable time to respond indicating whether they support or oppose the Preliminary Application.
- 3.4.5 At the discretion of the Presiding PHAB Member, all Preliminary Applications may be addressed in any of the following ways:
 - a. by Written Submissions;
 - b. by hearing (teleconference, videoconference, in-person)
- 3.4.6 The Presiding PHAB Member has the authority to hear and decide certain Preliminary Applications without requiring the full PHAB, or a quorum of the PHAB. This authority can be exercised where the resulting decision on the Preliminary Application does not affect the entire appeal process or render the appeal dismissed.
- 3.4.7 The Presiding PHAB Member, in their discretion, may require a quorum of the PHAB to hear any Preliminary Application.
- 3.4.8 The Presiding PHAB Member may, in their discretion, deliver their decision initially by way of a short decision letter to provide a written record of that decision. The decision of the PHAB will then be issued in writing including reasons within timeframe outlined in section 5.1.3.

3.5 Preliminary Applications: Stay Applications

- 3.5.1 Serving an appeal on the PHAB does not relieve the Appellant of their obligation to comply with the Decision they are appealing.
- 3.5.2 If the Appellant does not want to comply with the Decision and the Decision requires things to be done before the date of the appeal hearing, or if AHS declines to extend the date for compliance with the Decision, then the Appellant must specifically indicate to the PHAB that they are seeking to Stay the Decision pending the hearing of the appeal.
- 3.5.3 The Appellant notifies the PHAB of their application for a Stay by checking the required box on the prescribed Notice of Appeal form. The Appellant should also indicate briefly on the prescribed Notice of Appeal form, or an attached document, the basis for the Stay request. However, the PHAB, in its discretion, may ask for more information in advance of hearing the Stay application.
 - a. The test for a stay pending appeal requires that there is a serious question to be determined on appeal, that the applicant will suffer irreparable harm if the stay is not granted, and that the balance of convenience favours granting the stay.
- 3.5.4 Upon receipt of an application for a Stay and any further information requested, the Presiding PHAB Member has three options. The Presiding PHAB Member may:
 - a. make an immediate order granting the Stay of the Decision appealed pending the hearing of the appeal;

- b. immediately dismiss the application for a Stay; or
 - c. decide that a hearing of the Stay application is required.
- 3.5.5 If the Presiding PHAB Member decides that a hearing of the Stay application is required, then the Presiding PHAB Member may issue specific directions. Directions may include an explanation of the expectations on the Appellant for a Stay, how copies of the Written Submissions, if any, are to be submitted as well as procedures for a hearing by videoconference, teleconference, or in-person.
- 3.5.6 After the conclusion of the hearing of the Stay application, the Presiding PHAB Member may issue their decision initially by way of a short decision letter. Detailed written reasons will follow within a reasonable timeframe in the circumstances.
- 3.5.7 The Presiding PHAB Member may either Stay the Decision appealed pending hearing of the appeal or dismiss the application for a Stay.

3.6 Preliminary Applications: Dismissal of a Moot Appeal

- 3.6.1 After an appeal is launched, AHS may rescind the Decision for reasons including, but not limited to, the Appellant complying with the Decision. AHS may make a Preliminary Application to the PHAB to dismiss the appeal on the grounds it is Moot.
- 3.6.2 The PHAB will review, on a case-by-case basis, all Preliminary Applications for dismissal that are based on the grounds the appeal is Moot. Except in extraordinary circumstances, the PHAB will generally decline to hear Moot appeals.
- 3.6.3 In considering whether an appeal is Moot, the PHAB shall consider whether an adversarial relationship exists between the Appellant and AHS.
- 3.6.4 If no adversarial relationship remains, then generally the PHAB will dismiss the appeal. The PHAB has sole discretion to decide whether to dismiss the appeal because it is Moot.
- 3.6.5 If an adversarial relationship remains, the PHAB will consider all relevant factors to determine whether it should exercise its discretion to hear a Moot appeal.

3.7 Disclosure

- 3.7.1 The Parties must provide Disclosure to the PHAB and to the other Parties no later than ten (10) calendar days before the date of the appeal hearing, or a date determined by the PHAB. Disclosure should be organized in a way (i.e., through use of document titles, page numbers and tabs) that permits ease of identifying exhibits and navigating through disclosures during a hearing.
- 3.7.2 The Parties must provide Disclosure electronically by email or make arrangements with the PHAB to submit by other means (e.g., a thumb drive or a secure file sharing application, etc.) if email submission is not possible.
- 3.7.3 In cases where a Party is unable to comply with the timeline, the Party may make a written application to the PHAB for additional time to provide the Disclosure. The written application must include detailed reasons.
- 3.7.4 If an extension is granted, the other Party may make the same request, however, it is at the sole discretion of the Presiding PHAB Member to determine if an extension will also be granted to the other Party.

3.8 Notice of Hearing

- 3.8.1 The Notice of Hearing will be issued to the Parties, generally by email, a reasonable time in advance of the hearing. If a Party does not have access to email, the PHAB will make reasonable alternate arrangements.
- 3.8.2 The Notice of Hearing must contain the following information:
 - a. the date, time, and place of the hearing;
 - b. a list of the Grounds of Appeal;
 - c. the mailing address, fax number, and email address of the PHAB; and
 - d. any other matter the PHAB deems relevant.

3.9 Intervenor

- 3.9.1 Intervenor is rarely permitted to appear on an appeal before the PHAB. However, the PHAB acknowledges that a non-party to the appeal might be interested in intervening in an appeal.
- 3.9.2 The PHAB will consider applications for intervention and will follow the same general process that applies to Preliminary Applications.
- 3.9.3 Requests for intervention must be in writing and must be submitted to the PHAB no later than two weeks before the scheduled hearing date.
- 3.9.4 The request for intervention must contain:
 - a. the name, address, email, telephone number and fax number (if applicable) of the person submitting the request, and if applicable, the contact information of their lawyer or agent;
 - b. a summary of the person's interest in the subject matter of the Notice of Appeal; and,
 - c. the signature of the person submitting the request, or their lawyer or agent.
- 3.9.5 Generally, persons or groups wishing to intervene, must provide evidence of the following:
 - a. 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 that will not repeat or duplicate evidence presented by other parties;
 - b. The intervention will not unnecessarily delay the appeal proceedings;
 - c. The proposed Intervenor is supporting or opposing the appeal, so PHAB knows whether they are likely to assist the Appellant or AHS; and
 - d. If the intervention request is late, there are documented and sound reasons why the Intervenor did not file earlier seeking such status.
- 3.9.6 On receipt of an application for intervention, the PHAB will give notice of the application to all Parties to the appeal, who shall be given a reasonable time to provide a response indicating whether they support or oppose the application.
- 3.9.7 When the PHAB decides whether the person submitting the request will be allowed to appear as an Intervenor, it will give that person and the Parties written notice of the decision.
- 3.9.8 The PHAB will advise the Intervenor of 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.

4. THE APPEAL HEARING

4.1 Venue

- 4.1.1 Hearings are held by teleconference or videoconference.
- 4.1.2 Any Party may make a Preliminary Application to request that a hearing be held in-person.

4.2 Written Submissions

- 4.2.1 Every Party to an appeal may file Written Submissions with the PHAB.
- 4.2.2 Any Party wishing to file Written Submissions must deliver a copy to the PHAB, and every other Party, at least three (3) calendar days before the date of the hearing, or by a date set out by the PHAB.

4.3 Recordings and Transcripts

- 4.3.1 The PHAB will record the entire hearing, such as audio, video, or application generated transcripts, for sole use by the PHAB in making its decision.
- 4.3.2 The PHAB will not arrange for language interpretation, or professional transcription of the hearing unless requested by one or more of the Parties, in which case the requesting Party will be required to pay for the cost of the interpretation/transcription and provide a copy of the transcript to the PHAB and the other Parties.
- 4.3.3 Parties are not permitted to use any Electronic Devices during hearings without the PHAB's consent. Electronic Devices must be turned off during the hearing.
- 4.3.4 At the discretion of the Presiding PHAB Member, Parties are permitted to use Electronic Devices for the purposes 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 hearing.

4.4 Standard Procedure

- 4.4.1 The Presiding PHAB Member will introduce the Panel and identify the Decision being appealed.
- 4.4.2 The Presiding PHAB Member will ask the Parties whether they have any objection to the composition of the Panel, or to PHAB's jurisdiction to hear the appeal.
- 4.4.3 At the discretion of the Presiding PHAB Member, Parties may be allowed to provide a brief opening statement that may 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. Normally, the Appellant will make the opening statement first, followed by any other Parties, followed by AHS.
- 4.4.4 Unless directed otherwise by the Presiding PHAB Member, the Parties will present evidence at the hearing in the following order:
 - a. The Appellant;
 - b. Any other Parties or Intervenor whose interest or position is, in the opinion of the PHAB, similar to that of the Appellant;

- c. AHS;
 - d. Any other Parties, or Intervenors, whose interest or position is, in the opinion of the PHAB, similar to that of AHS;
 - e. The Appellant, in rebuttal.
- 4.4.5 At the close of the hearing, any Party to the proceedings may be entitled, subject to the PHAB's discretion, to give oral or written closing submissions which will become part of the PHAB's Record of Proceedings.
- 4.4.6 Regardless of whether closing Written Submissions are permitted, at the close of the appeal hearing, the Presiding PHAB Member will provide each Party with an opportunity to make oral closing remarks.
- 4.4.7 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 will be accepted unless the PHAB, in its sole discretion, acting reasonably, decides the evidence is material, and that there was good cause for the failure to produce it during the hearing.
- 4.4.8 Further to the Rules of Procedure, any decision by the PHAB to accept closing Written Submissions after the date of the hearing will not be considered to be reopening a closed hearing.

4.5 Witnesses

- 4.5.1 The Parties to a hearing may call any Expert Witness or Lay Witness that they feel is necessary to provide testimony or relevant evidence in their case.
- 4.5.2 Upon confirmation of the date, time and details of the hearing, the Parties will provide to the PHAB Secretariat and to the other Parties:
- a. a list of witnesses to be called by the Party, along with a summary of each witness' anticipated evidence; and,
 - b. 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.
- 4.5.3 A Party seeking to call an Expert Witness must establish that the witness possesses the requisite specialized knowledge, skill, training, education, or experience to provide opinion evidence relevant to the issues in the hearing.
- 4.5.4 The qualifications of an Expert Witness may be challenged by any Party, either prior to or during the hearing. The PHAB will determine, in its sole discretion acting reasonably, whether the witness meets the threshold to be qualified as an Expert Witness, and if so, the appropriate weight to assign to their evidence.
- 4.5.5 In all cases, the PHAB, in its sole discretion, acting reasonably, will determine the weight to be given to each witness' testimony, whether an Expert Witness or Lay Witness, based on the witness' qualifications, experience and relevance to the case.
- 4.5.6 If a witness is unable to attend and provide evidence during a hearing, the Presiding PHAB Member may, in their sole discretion, acting reasonably, accept written testimony instead of oral evidence.
- 4.5.7 When hearings are held in person, the Presiding PHAB Member may also, in their sole discretion, acting reasonably, 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. For all hearings that are scheduled to take place in-person, this discretion will only be exercised in extraordinary circumstances and the usual process is for a witness to give evidence in person.

- 4.5.8 Prior to any person providing evidence, the Presiding Member will ask for their solemn affirmation that the evidence they give will be truthful.

4.6 Evidence

- 4.6.1 The PHAB is not bound by the formal rules of evidence.

4.7 Failure to Provide Submissions

- 4.7.1 If a Party does not provide Disclosure or Written Submissions by the deadline set by the PHAB, the PHAB will make a decision on the matter without reference to any Disclosure or Written Submissions from that Party.

4.8 Costs

- 4.8.1 The PHAB does not have the jurisdiction to award costs to any Party and will not consider applications for costs.

5. PHAB DECISION AND REASONS

- 5.1.1 The PHAB will issue its decision with reasons in writing to the Parties following the hearing in accordance with the Act and these Rules.
- 5.1.2 The PHAB, in its discretion, may choose to initially communicate only its decision on the appeal by way of a letter addressed to the Parties, with detailed reasons to follow.
- 5.1.3 The PHAB will issue its decision with reasons in writing within 90 days of the close of the hearing, subject to the PHAB's discretion to extend the period for issuing its decision with reasons in writing for a further 90 days. If the PHAB chooses to exercise this discretion it will provide notice in writing to the Parties within the original 90-day period.
- 5.1.4 The PHAB's decision with reasons will be made available to the public through the PHAB's website.
- 5.1.5 PHAB decisions are final and cannot be appealed.