

RE: THE MATTER OF AN APPEAL PURSUANT TO
S. 45(1) OF THE REGIONAL HEALTH SERVICES ACT AND S. 8(1) OF
THE PRACTITIONER STAFF APPEALS REGULATIONS WITH RESPECT TO
CERTAIN DECISIONS MADE WITH RESPECT TO THE APPELLANT'S PRIVILEGES

BETWEEN:

DR. M. J. WILLARD,

APPELLANT

AND:

SUNRISE REGIONAL HEALTH AUTHORITY,

RESPONDENT

INTERIM DECISION OF THE PRACTITIONER STAFF APPEALS TRIBUNAL

David Thera appeared and acted on behalf of the Appellant

Eileen Libby appeared and acted on behalf of the Respondent

A. INTRODUCTION

This is an appeal by Dr. M. J. Willard, the Appellant, pursuant to Section 45(1) of The Regional Health Services Act (“the Act”).

As described in the Notice of Appeal dated March 14, 2008, the Appellant appeals the following:

“1. That Dr. M. J. Willard, the above named Appellant hereby appeals to the Practitioner Staff Appeals Tribunal from the following decisions of the Sunrise Regional Health Authority (“the Region”):

1. To neglect or decline to process Dr. Willard’s application for reappointment in the manner set out in the Region’s Practitioner Staff Bylaws;
2. To neglect or decline to reappoint Dr. Willard to the Region Practitioner Staff;
3. To neglect or decline to reappoint Dr. Willard to the category of Active Medical Staff or in the alternative Associate Medical Staff, or in the further alternative Temporary Medical Staff;
4. To accept, if they did, the recommendation of its administrative and executive staff to decline to reappoint Dr. Willard to any category of Practitioner Staff;
5. To neglect or decline to recognize that Dr. Willard’s existing privileges continue until her application for reappointment has been determined by the Board in accordance with its bylaws;
6. To neglect or decline to devote any or any sufficient internal or external resources to resolve any issues of concern with respect to Dr. Willard’s exercise of her privileges.”

The grounds of Appeal are also set out in the Notice of Appeal and are as follows:

“2. That the appeal is taken upon the following grounds:

- a. The Region has failed to follow the process set out in its bylaws with respect to Dr. Willard's application for reappointment and continuation of her existing privileges;
- b. The Region has failed to follow the principles of natural justice with respect to Dr. Willard's application for reappointment and continuation of her existing privileges;
- c. The Region has discriminated against Dr. Willard on the basis of her physical disability;
- d. The Region has not made any or any sufficient attempt to identify issues of concern with respect to Dr. Willard's privileges or to devote internal or external resources to resolving those issues;
- e. No reasons have been provided by the Region and no good reasons exist for failure to reappoint Dr. Willard to Practitioner Staff and in particular to Active or Associate Medical Staff;
- f. The Region has failed to consider that Dr. Willard is well qualified and is the only pathologist in the Sunrise Health Region;
- g. Such further and other grounds as counsel may advise and this honourable tribunal may allow."

A hearing was convened before the Tribunal on June 25, 2008, in Regina, Saskatchewan, at which time the Respondent raised the preliminary issue of whether the Practitioner Staff Appeals Tribunal (the "Tribunal") had jurisdiction to hear this appeal.

This decision addresses this preliminary issue.

B. THE EVIDENCE

The evidence presented to the Tribunal was in the form of three (3) Affidavits - an Affidavit of the Appellant, Dr. Willard, dated April 25, 2008, an Affidavit of Suann Laurent dated May 26, 2008, and an Affidavit of Dr. Michael Bishop dated May 26, 2008. The following is a chronology of events derived from those Affidavits.

1. The Appellant is an anatomical pathologist.
2. In October, 2006, the Appellant received an offer of employment from the Respondent for an appointment as a pathologist commencing February 21, 2007. The Appellant states that she was advised by Ms. Laurent, currently the Senior Vice-President of Health Services for the Respondent (but at that time, the Executive Director of Health Services) that she would be on probation for six (6) months. The Appellant states that she was also advised by Ms. Laurent at the time that she would be granted privileges for a six (6) month probationary period, following which she would receive full (Active) privileges. Ms. Laurent states that she did advise the Appellant that her probationary period would be six (6) months, but denies that the matter of privileges was raised.
3. By letter dated February 20, 2007, from Ms. Laurent, the Respondent's offer of employment to the Appellant was confirmed in writing. The letter describes the commencement date of employment, the annual salary and the fringe benefits. The Appellant commenced employment with the Respondent as a pathologist on February 21, 2007.
4. As of February 21, 2007, all physicians employed by the Respondent were subject to the Sunrise Health Region Practice Staff Bylaws (the "Bylaws").
5. The Appellant states that she did not receive any documentation from the Respondent confirming the nature of her privileges. Dr. Bishop, the Senior Medical Officer of the Respondent, states that he met with the Appellant shortly after her arrival to commence employment and advised her that he would grant her temporary privileges to practice pursuant to the authority given to him by the Bylaws.

6. On July 5, 2007, the Appellant, Ms. Laurent and Dr. Bishop met. The Appellant states that Ms. Laurent reiterated to her that she would be granted Active privileges after a period of six (6) months. Ms. Laurent, on the other hand, denies that she advised the Appellant that she would be granted Active privileges after a period of six (6) months or at all. Rather, Ms. Laurent states that she advised the Appellant that all physicians who were being considered for Associate privileges must serve a 12 month probationary period pursuant to the Bylaws.
7. On August 13, 2007, at a meeting of the Credentials Committee, the Appellant, after noting that her name was not on the list of physicians being considered for Active privileges, asked Ms. Laurent and Dr. Bishop why her name was not on the list given her recollection that she would receive Active privileges after her six (6) month probationary period. The Appellant recalls Ms. Laurent responding with the comment "Did I say that?" and Dr. Bishop indicating that he would table the matter to the next meeting. Ms. Laurent, on the other hand, denies that she responded with the words "Did I say that?" Dr. Bishop also states that when the matter of the Appellant's privileges was brought up at this meeting, and in particular the consideration of her appointment to the Associate staff with a 12 month probationary period, the Appellant specifically refused to accept Associate staff privileges because of the 12 month probationary period. As a result of her refusal, the Credentials Committee recommended that Dr. Willard be appointed to the Temporary Medical Staff.
8. At the Practitioner's Advisory Committee meeting on August 13, 2007 (that followed the Credentials Committee meeting), the recommendation from the Credentials Committee concerning the privileges for the Appellant was approved. Dr. Bishop states that the Appellant was also present at this meeting of the Practitioner's Advisory Committee.
9. On August 15, 2007, the Appellant, Ms. Laurent and Dr. Bishop met. The Appellant and Ms. Laurent state that Dr. Bishop explained to her that it would be better for her to have Associate privileges rather than temporary privileges. Ms. Laurent and Dr.

Bishop also state that Dr. Bishop further indicated that it would be unreasonable for her to serve the 12 month probationary period from other than her original start date (i.e. the date she commenced employment) with the Respondent.

10. By correspondence dated August 16, 2007, to the Appellant, Ms. Laurent wrote to confirm the Appellant's acceptance of the offer to advance her application for appointment to the Associate Medical Staff (which included a 12 month probationary period) and to confirm that the Appellant would continue to exercise temporary privileges while the application process proceeded. Because of a reference in the correspondence requiring a demonstrated improvement in certain matters during the balance of her probationary period, the Appellant states that she refused to sign the same acknowledging her acceptance of the offer.
11. On August 20, 2007, the Appellant states that Ms. Laurent's assistant and another individual approached her in the office and asked her to sign the letter of August 16, 2007, from Ms. Laurent. The Appellant declined to do so, stating that she needed to speak to a representative of the Saskatchewan Medical Association.
12. On August 20, 2007, Ms. Laurent sent an e-mail to the Appellant advising her that her probation period would end on February 21, 2007, which was 12 months from the date of her hire.
13. On August 22, 2007, the Board of the Respondent approved the Practitioner's Advisory Committee recommendation concerning the grant of temporary privileges to the Appellant.
14. By letter dated September 16, 2007, Dr. Bishop wrote to the Appellant indicating that she had refused an appointment to the Active Medical Staff (Associate) at the Credentials Committee meeting. The Appellant states that she never refused such an appointment. The letter also states that "The Credentials Committee has deferred a decision in this matter until its next meeting. In the meantime, I will appoint you to the Temporary Medical Staff, Section 27.3 of the bylaws." Dr. Bishop states that this statement of the matter being deferred was in error – that the Credentials Committee

had recommended the granting of temporary privileges to the Appellant and that the Board had approved the continuation of temporary privileges.

15. On September 24, 2007, the Appellant completed an application for an appointment to the Medical/Dental staff of the Respondent with Active privileges. The Appellant states that she did not receive a response from the Respondent with respect to the application.
16. On November 19, 2007, the Appellant was called to a meeting with Ms. Laurent and Dr. Bishop, in which she was advised that she was not going to pass her next three (3) months of probation and that she should “find another job” due to a number of concerns and incidents.
17. By letter dated December 11, 2007, Ms. Laurent wrote to the Appellant to reiterate two (2) performance issues that were discussed at the November 19, 2007, meeting and to also advise her that given these performance issue concerns, her temporary privileges would expire on February 21, 2007, and that “no recommendation will be advanced to the Board to appoint you to any category of the medical staff when your current term expires.”
18. On December 19, 2007, the Appellant forwarded an e-mail to Dr. Bishop indicating that she wished “to apply for reappointment to the practitioner staff when my current privileges expire, which I am told is February 21, 2008, with a view toward Active Medical Staff status.” She further requested that she be advised of any paperwork that was required.
19. The Appellant states that on December 21, 2007, she received a notice that a meeting of the Credentials Committee was scheduled for January 14, 2008, for consideration of privileges for a variety of doctors. After noticing that her name was not on the agenda, she forwarded an e-mail to Dr. Bishop requesting him to supply her with the materials necessary to file her application for privileges and to allow her name to stand for consideration by the Credentials Committee.

20. By letter dated December 31, 2007, the Appellant's lawyer wrote to the Respondent's lawyer noting that the Appellant had previously written to Dr. Bishop requesting copies of any applicable forms or other paperwork which was required to initiate her application for reappointment to the practitioner staff.
21. By letter dated January 7, 2007, the Appellant wrote to Dr. Bishop again requesting any application forms or other paperwork that may be required for her application for reappointment to the Medical Practitioner Staff.
22. By letter dated January 7, 2008, Dr. Bishop wrote to the Appellant and stated as follows:

“I have received your letter dated December 19, 2007. As you will recall from our meeting of November 19, 2007, we discussed performance issues, which had come to the Region's attention a short time before the meeting. The issues discussed with you by myself and Suann Laurent were disturbingly similar in character to those discussed with you in August of 2007. In the result, at the November 19, 2007 meeting you were verbally advised that temporary privileges beyond February 21, 2008 would not be requested as a result of the issues exhibited during your short tenure with the Region. There have been no developments since the November 19, 2007 meeting which would mandate a different approach.

Moreover, as you are aware, your privilege status with the Sunrise Health region is that you are operating under temporary privileges as temporary medical staff (Article 27.3 of the Practitioner Staff Bylaws) which were granted to you under the authority of the senior medical officer pursuant to Article 27. Clearly, there is no requirement to appoint any medical staff person beyond the expiration of any term outlined in Article 27, which in your case is February 21, 2008.”
23. The Appellant thereafter prepared her own application and forwarded it to Dr. Bishop (and also the heads of Family Medicine and Surgery) on or about January 9, 2008, stating, in the cover page that accompanied her application, that she would prefer Active status, but was amenable to Associate status or, failing that, temporary privileges.
24. By letter dated January 16, 2008, the Appellant's lawyer wrote to the Respondent's lawyer confirming that the Appellant had submitted her application and that if there were any technical problems with the application, to please advise him so that the

Appellant could correct them. The Appellant's lawyer proceeded to ask that the application be considered pursuant to the provisions of the Bylaws.

25. By letter dated February 4, 2008, Dr. Bishop wrote to the Appellant confirming the pending expiry of her temporary privileges and employment with the Respondent.
26. On February 8, 2008, the Appellant states that she suffered a fall at work and was unable since that date to return to work.

C. STATUTORY FRAMEWORK AND BYLAWS

The *Act* establishes the health regions and the regional health authorities that govern them. Subsections 16(1), (4) and (5) provide as follows:

Status and composition of regional health authority

16(1) A regional health authority is a not-for-profit corporation.

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(4) The members of the regional health authority constitute the board of the regional health authority.

(5) The board is responsible for administering the affairs and conducting the business of the regional health authority.

Every regional health authority is required to make bylaws in relation to certain matters as set out in Section 43 of the *Act*:

Practitioner staff bylaws

43 Every regional health authority and every affiliate prescribed for the purposes of this section shall make bylaws governing the practitioner staff, including bylaws:

(a) respecting the appointment, reappointment and termination of appointment of persons to the practitioner staff and the suspension of persons appointed to the practitioner staff;

(a.1) respecting the disciplining of members of the practitioner staff;

(a.2) respecting the granting of privileges to members of the practitioner staff, including the amending, suspending and revoking of privileges granted;

(b) governing the classification and organization of the practitioner staff;

(c) governing the appointment of committees and officers of the practitioner staff and prescribing their duties;

(d) respecting any other prescribed matter.

Practitioner Staff Bylaws were approved by the Respondent on November 22, 2006, and approved by the Minister of Health on December 4, 2006. For the purposes of this appeal, the following are the relevant provisions of the Bylaws:

Part III Staff Categories

Practitioner Staff Categories

21 The practitioner staff shall be organized into the following categories:

(a) medical;

- (b) dental;
- (c) chiropractic; and
- (d) honorary.

Establishment of Practitioner Staff Subcategories

22(1) The medical staff shall be organized into the following groups:

- (a) associate;
- (b) active;
- (c) limited;
- (d) assistant;
- (e) visiting;
- (f) temporary;
- (g) resident; and
- (h) training fellow.

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Associate Medical Staff

23(1) The associate medical staff shall consist of those physicians who apply for an initial appointment to the active, limited or assistant medical staff, and who are appointed by the Board to the associate medical staff. Appointment to the associate medical staff shall be considered a probationary appointment during which time the Practitioner Advisory Committee and the appropriate department head shall evaluate the member.

(2) Each associate medical staff member shall have such privileges that are appropriate to the active, limited or assistant medical staff category to which they applied, unless otherwise specified in the appointment.

(3) Subject to subsections (4) and (5), an associate medical staff member shall work for a twelve month probationary period under the mentorship or supervision of an active medical staff member assigned by the senior medical officer pursuant to the recommendation of the department head to whom the associate medical staff member has been assigned.

(4) In exceptional circumstances, the senior medical officer may recommend to the Board waiver or reduction of the twelve-month probationary period, and the Board in its discretion may waive or reduce the probationary period. If the Board agrees with the recommendation, the Board may grant an appointment for the balance of the term to the category of medical staff to which the physician initially applied.

(5) At the end of the twelve-month appointment, and subject to the provisions of these bylaws respecting reappointment, the Practitioner Advisory Committee shall review the performance of the associate medical staff member and recommend to the Board either:

- (a) the appointment of the physician to the active, limited or assistant medical staff, as the case may be; or
 - (b) the physician be subject to a further probationary period by reappointment to the associate medical staff for a further period not exceeding twelve months.
- (6) No member of the associate medical staff shall be appointed to the associate medical staff for more than twenty-four consecutive months.

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Active Medical Staff

24(1) The active medical staff shall consist of those physicians who have been appointed as active medical staff by the Board.

(2) Except where approved by the Board, no physician with an active medical staff appointment with another regional health authority shall be appointed to the active medical staff.

(3) Every physician applying for an initial appointment to the active medical staff will be appointed to the associate medical staff for a probationary period unless the Board directs otherwise.

(4) All active medical staff members shall have admitting privileges to regional health authority facilities unless otherwise specified in their appointment to the medical staff.

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Temporary Medical Staff

27(1) The temporary medical staff shall consist of those physicians who have been appointed to the temporary medical staff by the Board.

(2) The Board may appoint a physician to the temporary medical staff with such privileges as it deems appropriate, where the appointment is:

- (a) for a defined period of time of less than twelve (12) months and for a specific purpose; or
- (b) to provide temporary replacement or support for a member of the active or limited medical staff.

(3) Notwithstanding subsection (1) and subsection 37(1), the senior medical officer may:

- (a) appoint the physician who is not a member of the medical staff, to the temporary medical staff and grant temporary privileges where, in the opinion of the senior medical officer, there is an immediate need for the service and it is not practical for the applicant to submit all of the information required to be submitted pursuant to this Bylaw provided the senior medical officer is satisfied that the applicant meets the criteria for appointment set out in section 40; and
 - (b) grant temporary privileges to a physician who is a member of the medical staff where, in the opinion of the senior medical officer, there is an immediate need for the service.
- (4) The granting of temporary privileges and appointment pursuant to subsection (3) shall be reviewed by the Board at its next regularly scheduled meeting and the Board may, where considered appropriate, affirm, amend, modify or revoke any temporary privileges. Parts IV and V of these bylaws do not apply to a decision of the Board made pursuant to this section.

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Part IV Appointment and Reappointment - General

Power to Appoint and Reappoint

37(1) Except for a temporary appointment or the granting of temporary privileges pursuant to section 27, the Board has the sole and exclusive power to appoint and reappoint members to the practitioner staff and to grant privileges. In considering whether to make an appointment or reappointment to the practitioner staff, or to grant privileges, the Board shall consider the recommendations of the Practitioner Advisory Committee, however the Board is not bound by those recommendations.

(2) Except in the circumstances mentioned in clause 27(3)(a), a practitioner must hold an appointment to the practitioner staff in order:

- (a) to hold any privilege under these bylaw;
 - (b) to provide any service to an individual or patient in a facility operated or program offered by the regional health authority; or
 - (c) to refer any individual or patient to any service provided by the regional health authority.
- (3) Any member of the practitioner staff who resigned or otherwise caused or permitted termination from the practitioner staff, or whose practitioner staff membership has been terminated by the Board and who subsequently wishes

to become a member of the practitioner staff, is required to make application and follow the process for an initial appointment.

Term of Appointment or Reappointment

38 Unless otherwise specified in an appointment or terminated prior to the expiration of the term of the appointment, an appointment expires on that day that is one year from the date the appointment is granted.

**Part V
Initial Appointment**

Initial Appointment Procedure

39(1) An application for initial appointment to the practitioner staff shall be processed in accordance with the provisions of *the Regional Health Services Act*, these Bylaws, the rules and regulations and the policies and procedures of the regional health authority.

(2) The senior medical officer shall supply a copy of these Bylaws to each practitioner who expresses an intention to apply for appointment to the practitioner staff.

(3) An applicant for initial appointment to the practitioner staff shall submit an application in writing to the senior medical officer, in a form approved by the senior medical officer, together with all information required to be submitted by these Bylaws. The senior medical officer may also require the applicant to complete an Impact Analysis Questionnaire.

Section 39(4) then lists the information which each application must include and the additional documentation which must accompany each application.

Process on Initial Appointment

42(1) Subject to subsection (2), upon receipt of a completed application for appointment, the senior medical officer, being of the initial opinion that the applicant meets the criteria set out in section 40, shall forward the completed application and all supporting material to the Credentials Committee for consideration and recommendation.

(2) If the senior medical officer is of the initial opinion that the application fails to meet the criteria set out in subsection 40(4), the senior medical officer may refuse to process the application for appointment and shall report the refusal to the Board for its consideration at its next regular meeting.

(3) If the Board adopts the recommendation of the senior medical officer to refuse to process the application for appointment, the Board shall serve or cause to be served a copy of its decision on the applicant within thirty (30) days after rendering its decision.

(4) The decision shall include a notice advising the applicant that if the applicant is aggrieved by the decision of the Board, the applicant may appeal that decision to a tribunal in accordance with *The Regional Health Services Act* and *The Practitioner Staff Appeals Regulations*.

(5) If the Board is of the initial opinion that the application meets the criteria set out in subsection 40(4) and the Board refuses to adopt the recommendation of the senior medical officer to refuse to process the application for appointment, the process described in sections 43 to 48 inclusive, with any necessary modification, shall be followed.

Sections 43 to 48 set out the remainder of the process to be followed, which includes:

- a consideration of the application by the Credentials Committee and its recommendation to the Practitioner Advisory Committee to accept or refuse the application (or in some cases to modify the category of practitioner staff category or the privileges)
- a consideration of the decision of the Credentials Committee by the Practitioner Advisory Committee and a recommendation by it to the Board
- a notice to the applicant of the recommendation of the Practitioner Advisory Committee and the date of the Board's meeting to consider such a recommendation
- the proceeding before the board in which the Board considers the said recommendation and hears submissions from the applicant if he or she wishes to make any
- the Board's decision with respect to the appointment to the practitioner staff and the grant of privileges
- service of the Board's decision on the applicant

Part VI Reappointment

Application for Reappointment

49(1) On an annual basis, each member of the practitioner staff shall apply for reappointment to the practitioner staff. The member shall submit to the senior medical officer:

- (a) a completed application for reappointment on a form approved by the senior medical officer and by no later than the date specified by the senior medical officer; and

- (b) the information set out in section 50 and such other information as may be requested by the senior medical officer.
- (2) An application for reappointment to the practitioner staff shall be processed in accordance with the provisions of *The Regional Health Services Act*, these Bylaws, the rules and regulations and the policies and procedures.
- (3) Where a member applies for reappointment pursuant to this section, his or her appointment to the practitioner staff shall be deemed to continue until the application for reappointment is determined by the Board in accordance with these Bylaws.

Information to be Submitted

50 The member shall submit details of:

- (a) continuing medical/dental/chiropractic education activities undertaken during the preceding year;
- (b) additional training or academic achievement during the preceding year;
- (c) administrative, teaching, research, scholarly work or special responsibilities assumed or continued during the preceding year;
- (d) evidence of current Canadian Medical Protection Association or other appropriate liability coverage satisfactory to the regional health authority;
- (e) any updated medical information respecting the matters outlined in section 39 in relation to the preceding year; and
- (f) the category of reappointment, the department or program to which the reappointment is requested and the privileges requested.

Application Deemed Incomplete

51 Notwithstanding subsection 49(2), until the member has provided all the information required to be submitted pursuant to these Bylaws, the application for reappointment will be deemed incomplete and will not be processed. If the information required by this section is not provided within sixty [60] days from the date of submission of the application for reappointment, the application for reappointment is deemed withdrawn.

Criteria for Reappointment to the Practitioner Staff

52 A member shall be eligible for reappointment if the member:

- (a) continues to meet the criteria set out in subsection 40(1)-(3);
and
- (b) has demonstrated an appropriate use of regional health authority resources in a manner consistent with the policies and procedures of the respective department, program or section.

Process on Reappointment

53 Upon receipt of the completed application for reappointment, the senior medical officer, being satisfied that the member meets the criteria set out in subsections 40(1)-(3), shall forward the completed application and all supporting material to the Credentials Committee for consideration and recommendation.

Sections 54 to 61 of the Bylaws set out the remaining procedure for dealing with members of the practitioner staff who desire to apply for reappointment to the practitioner staff. The process is similar to that followed by the Respondent in dealing with applications for initial appointments – there is a review of the application for reappointment by the Credentials Committee, there is a hearing before the Practitioner Advisory Committee, a consideration of the recommendation of the Practitioner Advisory Committee by the Board, and finally, the decision by the Board.

Part VII

Change of Category or Privileges

Mid-Term Request for Change of Category or Privileges

Mid-term Request for Change of Category or Privileges

62 A member of the practitioner staff may request a change of practitioner staff category or privileges during the term of the member's appointment by written application to the senior medical officer. The process outlined in Part VI shall apply, with necessary modification, to a mid-term request.

Appeals to this Tribunal are provided for by Section 45 of the *Act*, which provides:

Appeals – decisions re practitioner staff

45(1) A person who is aggrieved by a decision of a regional health authority or an affiliate made in relation to the following matters may, in accordance with the regulations, appeal the decision to a tribunal established by the regulations:

- (a) the appointment of the person to the practitioner staff or the reappointment, suspension or termination of appointment of the person;
 - (b) the disciplining of the person as a member of the practitioner staff;
 - (c) the granting of privileges to the person as a member of the practitioner staff, or the amending, suspending or revoking of privileges granted to the person.
- (2) Subject to the regulations, a tribunal may determine its own procedures for the hearing of an appeal pursuant to subsection (1).
- (3) For the purposes of hearing an appeal pursuant to subsection (1), the members of a tribunal have the powers conferred on commissioners by *The Public Inquiries Act*.
- (4) A decision of a tribunal may be appealed to a judge of the Court of Queen's Bench on a question of law or jurisdiction within 30 days after the date of the tribunal's decision.

The procedure to be followed on appeals is set out in the Practitioner Staff Appeals Regulations (the "Regulations") and include:

Commencement of appeal

8(1) A practitioner who is aggrieved by a decision of a board with respect to a matter set out in subsection 45(1) of the *Act* may appeal that decision to the tribunal by serving a notice of appeal on the tribunal and a copy of the notice of appeal on the respondent within 30 days after the day on which the practitioner is served with a copy of the decision.

The term "board" as used in the Regulations has a defined meaning:

- “(c) “board” means:
- (i) a regional health authority
 - (ii) the board of directors of a prescribed affiliate.”

D. ISSUE AND ANALYSIS

The Respondent takes the position that the Tribunal has no jurisdiction to hear this appeal because:

- i) The Tribunal is created by statute and so its authority and jurisdiction is limited by the statute that creates it.
- ii) Section 45 of the *Act* only gives a right of appeal to persons who are aggrieved of a decision of a regional health authority.
- iii) No decision was made by the Respondent in this case – rather the temporary appointment and privileges granted to the Appellant simply expired and the Appellant’s appointment and privileges lapsed.

The Appellant takes the position that the Tribunal does have jurisdiction to hear this appeal because:

- i) The Respondent’s failure to process the Appellant’s request for a change in the practitioner staff category (i.e. to Active status), which was submitted in September, 2007, was a decision (i.e. a decision not to act) and is appealable pursuant to Section 45(1) of the *Act*; and
- ii) The Respondent’s failure to process the Appellant’s application for reappointment to the Medical Staff, which was submitted in January, 2008, was a decision (i.e. a decision not to act) with respect to her reappointment, and is appealable pursuant to Section 45(1) of the *Act*.

The issue, then, is whether the matters on which the Appellant bases her appeal – namely, that the Respondent neglected or declined to either process Dr. Willard’s application for reappointment or to reappoint her to the Medical Staff and/or neglected or declined to recognize her existing privileges until her application for reappointment had been determined by the Board in accordance with its Bylaws – are matters in respect of which an appeal is possible.

From the evidence, there does not appear to be any dispute that the Appellant was a member of the medical practitioner staff, specifically a member of what is described in the Bylaws as Temporary Medical Staff, with temporary privileges.

It appears (although there is only a reference in Dr. Bishop's Affidavit that he advised the Appellant that he would grant his temporary privileges at the time she commenced her employment) that the Appellant was initially appointed to the Temporary Medical Staff by Dr. Bishop pursuant to Section 27(3) of the Bylaws.

It is somewhat less clear as to what later occurred in August, 2007.

Dr. Bishop, in his Affidavit, indicates that the Credentials Committee at this time recommended that the Appellant be appointed to the Temporary Medical Staff. This is confirmed in the minutes from the meeting of that Committee dated August 13, 2007. This recommendation was subsequently approved by the Practitioner Advisory Committee and, according to Dr. Bishop, thereafter by the Board.

What is not clear is whether the Board's approval was a review and affirmation of the Appellant's appointment by Dr. Bishop pursuant to Section 27(4) of the Bylaws or whether it was an appointment by the Board pursuant to Section 27(2) of the Bylaws.

Section 27(4) of the Bylaws provides that an appointment to the temporary medical staff and the granting of temporary privileges by the senior medical officer shall be reviewed by the Board at its next meeting. It does not mention or seem to require that the appointment be dealt with by the Credentials Committee or the Practitioner Advisory Committee. Both of those committees did, however, deal with the matter of the Appellant's privileges in August, 2007.

The minutes of the meeting of the Credentials Committee recommending the appointment of the Appellant would seem to indicate that this was not, therefore, an appointment by Dr. Bishop pursuant to Section 27(3) of the Bylaws, but rather was a recommendation of the Credentials Committee based upon an application for appointment. The recommendation was eventually upheld by the Board, which suggests that this may have been an appointment by the Board pursuant to Section 27(2) of the Bylaws.

On the other hand, if this was an appointment by the Board pursuant to Section 27(2), there is no evidence that the Appellant applied for this appointment or that the appointment met the conditions of Section 27(2)(b) of the Bylaws or that it was granted for a specified period of time pursuant to Section 27(2)(a) of the Bylaws. To further confuse this matter, Dr. Bishop wrote to the Appellant on September 6, 2007 (i.e. at least two (2) weeks after the Board approved the staff privileges recommended by the Practitioner Advisory Committee), advising her that he would appoint her to the Temporary Medical Staff pursuant to “S. 27.3” of the Bylaws (which presumably meant Section 27(3) of the Bylaws), the provision which allowed him to appoint physicians to the Temporary Medical Staff. Moreover, in his correspondence to the Appellant on January 7, 2008, he noted that the Appellant was operating under temporary privileges as Temporary Medical Staff under Article 27.3 (again, which presumably meant Section 27(3) of the Bylaws).

Notwithstanding the above, it appears that the Appellant was a member of the Temporary Medical Staff after August, 2007.

Following this date, the evidence shows that the Appellant made two (2) applications to the Respondent. Firstly, she completed an application for an appointment to the Active Medical Staff on September 24, 2007. (Although she does not state that she submitted this application, this can be inferred from her statement that she did not receive a response from the Respondent.)

Secondly, the Appellant completed and submitted an application for reappointment to the Medical Staff on about January 9, 2008, for a position in either the Associate Medical Staff, the Active Medical Staff or the Temporary Medical Staff.

On the date of each of these applications, the Appellant continued to be a member of the Temporary Medical Staff.

First Application

With respect to the first application made by the Appellant, Section 62 of the Bylaws permits any member of the practitioner staff to request a change of practitioner staff

category or privileges during the term of the member's appointment by written application to the senior medical officer.

The Appellant states in her Affidavit – and this was not denied or contradicted in the Affidavits filed by the Respondent – that she submitted such an application on September 24, 2007 for a position in the Active Medical Staff.

Section 62 of the Bylaws provides that the process outlined in Part VI of the Bylaws – dealing with applications for reappointment – shall apply with any necessary modifications to such a request.

Section 49 of the Bylaws requires the applicant to complete an application on a form approved by the senior medical officer containing the information set out in Section 50 of the Bylaws. The senior medical officer, after being satisfied that the member meets the criteria stipulated in the Bylaws, thereafter forwards the completed application to the Credentials Committee for consideration and recommendation. If the Credentials Committee recommends the appointment, it then proceeds to the Practitioner Advisory Committee for a hearing and, if the Practitioner Advisory Committee recommends the appointment, this appointment is forwarded to the Board for their consideration and decision.

The Appellant submits that there was a failure by the Respondent to process the Appellant's application for a change of practitioner staff category and privileges and, that this failure amount to a decision of the Respondent which is appealable pursuant to Section 45 of the *Act*.

There is little evidence before the Tribunal, however, concerning if or how the Appellant's application for a change of a practitioner staff category and privileges was handled by the Respondent.

The Appellant claims in her Affidavit – and this was also not disputed or contradicted in any Affidavits filed by the Respondent – that she did not receive a response to this application.

The Tribunal is therefore left in a difficult position of trying to reach a conclusion as to what, if anything, the Respondent did with this Application.

If may be, of course, that the application was incomplete and was not processed for this reason as described in Section 51 of the Bylaws. But this was not stated in either of the Affidavits filed by the Respondent – and perhaps most tellingly it was not referenced in Dr. Bishop’s Affidavit.

Accordingly, the Tribunal concludes, by inference and based on the evidence before it at this time, that the application was simply not dealt with in any manner.

This failure to deal with or process the Appellant’s application does, in the Tribunal’s opinion, amount to a decision by the Respondent concerning the Appellant’s request for a change of practitioner staff category and privileges. A decision not to review and process an application – which the Bylaws require the senior medical officer to do as the first step of the process – is a decision.

Accordingly, we are satisfied that there has been a decision by the Health Authority concerning the granting of privileges to the Appellant which makes this matter appealable to the Tribunal pursuant to Section 45(1) of the *Act*.

Second Application

Turning to the second application made on or about January 9, 2008, the Appellant submits that the failure to review and process her application for reappointment in any of the categories which the Appellant indicates in her application – Associate Medical Staff, Active Medical Staff or Temporary Medical Staff – is also a decision of the Respondent which permits her to appeal that decision pursuant to Section 45(1) of the *Act*.

Counsel for the Respondent, on the other hand, submits that members of the Temporary Medical Staff cannot apply for reappointment. Counsel points to Section 27 of the Bylaws that specifies that appointments to the Temporary Medical Staff are only for periods of less than 12 months, except in cases where the temporary employee is replacing or supporting a member of the active or limited staff. As such, this provision

stating the privileges do not extend beyond 12 months implies that such privileges are intended to expire. Moreover, counsel for the Respondent submits, the provisions of Section 27 also imply that Section 49 of the Bylaws, which allows for applications for reappointment “on an annual basis”, does not apply to Temporary Medical Staff. If each member of the Temporary Medical Staff may only be appointed for a time period of less than 12 months, by definition they cannot apply for reappointment on an annual basis as their privileges would have expired by the time the application was due.

In the opinion of this Tribunal, counsel’s submissions on behalf of the Respondent provides a far too restrictive reading of Section 27.

Section 27 provides that a physician can be appointed to the Temporary Medical Staff in one of three ways:

- i) The Board can appoint the physician for a defined period of time less than 12 months and for a specific purpose; or
- ii) The Board can appoint the physician to provide temporary replacement or support for a member of the active or limited staff; or
- iii) The senior medical officer may appoint the physician where the officer is of the opinion that there is an immediate need for the service of that physician. (In this last method of appointment, the granting of temporary privileges and appointment shall be reviewed by the Board and the Board may affirm, amend, modify or revoke any temporary privileges.)

Accordingly, some appointments (i.e. the latter two (2) methods of appointment) to the Temporary Medical Staff pursuant to Section 27 (and the privileges attached to such appointments) do not necessarily expire in less than 12 months from the date of the appointment and therefore Section 49 does not “by definition” result in an inability for all Temporary Medical Staff appointees to apply for reappointment because their appointment and privileges have already expired.

Section 49 states that each member of the practitioner staff shall apply for reappointment on an annual basis. It does not exclude any members of the practitioner staff. Physicians who are members of the Temporary Medical Staff are members of the practitioner staff and accordingly, they can apply for reappointment.

Given that our conclusion that a member of the Temporary Medical Staff can apply for reappointment to the Medical Staff, we turn to the question of whether the Appellant is correct in her submission that there was a failure by the Respondent to process the Appellant's application for reappointment to the Medical Staff and that failure amounted to a decision of the Respondent which is appealable pursuant to Section 45 of the *Act*?

As with the Appellant's first application on September 24, 2007, there is little evidence before the Tribunal concerning if or how the Appellant's application for reappointment to the Medical Staff was handled by the Respondent.

The Appellant's allegations in her Affidavit – that she and her lawyer made several requests to Dr. Bishop for the materials or forms necessary to complete and file her application for reappointment in December 2007 and January 2008 and that she was not provided the same – was not rebutted or denied by Dr. Bishop. According to the Bylaws, Dr. Bishop may not have been required to provide such documentation, but Section 49(1)(a) does indicate that such an application should be in a form “approved by the senior medical officer” and, as such, it seems reasonable that Dr. Bishop should have made arrangements for the form to be forwarded to the Appellant upon her request or, at a minimum, advised her as to where such a form could be obtained.

As to whether the application finally prepared and submitted by the Appellant on or about January 9, 2008, contained the necessary information that such an application should contain pursuant to Section 50 of the Bylaws, this was not dealt with at this stage of the hearing. But Dr. Bishop could have – but did not – indicate in his Affidavit whether this was the basis for not dealing with the Appellant's application.

The Appellant also states – and this was not denied or contradicted in the Affidavits filed by the Respondent – that she was not advised at any time as to the status of her

application for reappointment at any time after submission of the said application on or about January 9, 2008.

Again, the Tribunal is left in a difficult position of trying to reach a conclusion as to what the Respondent did upon receipt of the Appellant's application.

It may be, of course, that the application was incomplete and was not processed for that reason as described in Section 51 of the Bylaws.

This was not, however, stated in either of the Affidavits filed by the Respondent.

There is, however, evidence which suggests that the application was simply not reviewed or processed.

Dr. Bishop's correspondence of January 7, 2008, to the Appellant confirms that she was advised on November 19, 2007, that "temporary privileges beyond February 21, 2008 would not be requested... There have been no developments since the November 19, 2007 meeting which would mandate a different approach."

Given that the Appellant's application for reappointment is first dealt with by Dr. Bishop pursuant to the Bylaws, and given that the Appellant never received any response to her application, the reasonable inference to be drawn, based on the evidence before the Tribunal at this time, is that Dr. Bishop never reviewed or processed this application – he had previously concluded that he would not do so.

This Tribunal is of the opinion that this failure to process the Appellant's application does amount to a decision from the Respondent concerning the Appellant's reappointment to the Medical Staff. A decision not to review and process an application – which the Bylaws require the senior medical officer to do in the first instance – is still a decision.

Accordingly, we are satisfied that there has been a decision by the Health Authority concerning the reappointment of the Appellant to the Medical Staff which makes this matter appealable to the Tribunal pursuant to Section 45(1) of the *Act*.

Conclusion

For the reasons outlined above, this Tribunal has concluded it has the jurisdiction to hear the Appeal of the Appellant as set out in the Notice of Appeal dated March 14, 2008.

Practitioner Staff Appeals Tribunal

Dated at Regina, Saskatchewan, this “31st” day of “July”, 2008.

“Dirk Silversides”

Dirk Silversides, Chair

Dated at Melville, Saskatchewan, this “7th” day of “August”, 2008.

“Michael Fisher”

Michael Fisher, Q.C., Member

Dated at Saskatoon, Saskatchewan, this “12th” day of “August”, 2008.

“Robert Weiler”

Robert Weiler, Member