

HEALTH LAW BULLETIN

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The following is the second of a two-part series on open and closed board meetings and *in camera* and informal sessions.

HOSPITAL GOVERNANCE: *IN CAMERA* AND INFORMAL SESSIONS

THE DETERMINATION OF THE NEED FOR AN *IN CAMERA* MEETING

For hospital boards that regularly hold open board meetings, a board meeting policy should outline the appropriate subject matter for the board to exercise its discretion to move *in camera*. The policy should establish the timing for when an *in camera* meeting should be called and how it should be held. Typically, the need for an *in camera* meeting should be determined prior to the regular board meeting. However, if a particular matter arises during a meeting that triggers the need for an *in camera* meeting under the established criteria, the *in camera* meeting must be called promptly and all outsiders should be asked to leave. In either case, the board should examine the subject matter and make a determination by resolution that the subject matter comes within the established criteria.

Common reasons for a board to go *in camera* are:

- Labour Relations - negotiations and matters pertaining to:
 - collective bargaining; and
 - terms of employment of individual employees or management;
- Security, acquisition, sale, lease and exchange of property;
- Litigation or potential litigation matters;
- Discipline;
- Protected information:
 - information that would reveal trade secrets or the commercial, financial, labour relations, scientific or technical information of an individual or company;
 - information that is subject to solicitor client privilege; and
 - personal information of individuals, including employees.

For hospital boards that regularly hold closed board meetings, a board meeting policy might outline the reasons for and benefits of closed meetings.

COMMUNICATING WITH THE PUBLIC

Care must be taken to emphasize transparency and accountability when meetings are conducted *in camera*. If board meetings are closed to the public, it is essential to ensure that there are alternative methods for communicating the work of the hospital board to the community. These might include:

- media briefings by the chair of the board and CEO immediately following hospital board meetings;
- communiqués issued both internally and externally that summarize and highlight the proceedings of the hospital board meetings;
- periodic community meetings held to understand the needs and expectations of the community; and
- program advisory committees to hospital management.¹

¹ *Supra* note 10 at 37.

INFORMAL SESSIONS

Another interesting development in governance best practices is the introduction of informal sessions of elected directors at the conclusion of board meetings. Many hospitals introduced this practice in the past year to facilitate a candid reflection on the quality of information received from the CEO. This reflection informs board decisions and the quality of board decision-making.

The practice is not, however, without challenges. First, there is confusion between the *in camera* session of a formal board meeting and the informal session following a Board meeting. Second, in the hospital context, the Chief of Staff is an “inside Director” and the medical staff are “related directors” who are members of the Board by law but who should be excluded from the informal session for policy reasons. While it is desirable that they withdraw with management to avoid potential conflicts of interest, there may be instances where it is appropriate for them to participate. The Ontario Medical Association does not appear to support the exclusion of these physicians from the informal sessions.

It is essential to understand that the informal session is not part of the board meeting. Its purpose is merely to allow board members to air concerns about some or all of staff or management without the threat of offending management. The chair of the board is expected to follow up with the CEO on any matters raised in the informal session. Hospitals that introduce this practice must develop a policy indicating:

- that the informal session is not part of the board meeting;
 - no minutes are to be taken at these sessions;
 - no decisions are to be made at these sessions;
- the purpose of the informal session; and
- who is and who is not to attend informal sessions.

Written by Lydia Wakulowsky and Graham W.S. Scott, CM, QC

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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