

1980

## c 410 Public Hospitals Act

Ontario

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## CHAPTER 410

## Public Hospitals Act

## 1. In this Act,

Interpre-  
tation

- (a) "administrator" means the person who has for the time being the direct and actual superintendence and charge of a hospital;
- (b) "Appeal Board" means the Hospital Appeal Board;
- (c) "board" means the board of directors, governors, trustees, commission or other governing body or authority of a hospital;
- (d) "dependant" means a patient the charges for whose treatment some other person is liable for in law;
- (e) "hospital" means any institution, building or other premises or place established for the treatment of persons afflicted with or suffering from sickness, disease or injury, or for the treatment of convalescent or chronically ill persons that is approved under this Act as a public hospital;
- (f) "inspector" means an officer of the Ministry designated under this Act as an inspector;
- (g) "medical advisory committee" means a committee established under section 32;
- (h) "medical department" means a division of the medical staff of a hospital for the provision of a specified type of medical diagnosis or treatment;
- (i) "Minister" means the Minister of Health;
- (j) "Ministry" means the Ministry of Health;
- (k) "municipality" means a city, separated town or county, except that in a territorial district it means a city, town, village, township or improvement district;

(l) "out-patient" means a person who is received in a hospital for examination or treatment or both, but who is not admitted as a patient;

(m) "patient" means a person received and lodged in a hospital for the purpose of treatment;

(n) "physician" means a legally qualified medical practitioner;

(o) "provincial aid" means any sum paid to a hospital under this Act or the *Health Insurance Act*;

R.S.O. 1980,  
c. 197

(p) "regulations" means the regulations made under this Act;

(q) "resident" means actually resident in a municipality for a period of three months within the six months next prior to admission to a hospital;

(r) "territorial district" means a territorial district set forth in the *Territorial Division Act*;

R.S.O. 1980,  
c. 497

(s) "treatment" means the maintenance, observation, medical care and supervision and skilled nursing care of a patient and, if dental service is made available in a hospital by its board, includes the dental care and supervision of the patient;

(t) "unorganized territory" means those parts of Ontario that are without municipal organization, including Indian reservations and provincial parks, but not including property of the Government of Canada used for the purposes of national defence installations, camps or stations. R.S.O. 1970, c. 378, s. 1; 1972, c. 90, s. 1.

Private  
hospitals  
not affected  
R.S.O. 1980,  
c. 389

**2.** Nothing in this Act in any way relates to or affects a private hospital under the *Private Hospitals Act*. R.S.O. 1970, c. 378, s. 2; 1972, c. 90, s. 2.

Adminis-  
tration and  
enforcement

**3.** The Minister shall administer and enforce this Act and the regulations. R.S.O. 1970, c. 378, s. 3; 1972, c. 90, s. 3.

Approval of  
incorporation  
R.S.O. 1980,  
c. 95

**4.—(1)** No application to incorporate a hospital under the *Corporations Act* or under a private Act shall be proceeded with until it has first received the approval of the Minister. R.S.O. 1970, c. 378, s. 4 (1); 1972, c. 90, s. 4 (1).

(2) No institution, building or other premises or place shall be operated or used for the purposes of a hospital unless it has received the approval of the Lieutenant Governor in Council upon the recommendation of the Minister. R.S.O. 1970, c. 378, s. 4 (2); 1972, c. 90, s. 4 (2). <sup>Approval for use</sup>

(3) No additional building or facilities shall be added to a hospital until the plans therefor have been approved by the Minister. R.S.O. 1970, c. 378, s. 4 (3); 1972, c. 90, s. 4 (3). <sup>Approval of additions</sup>

(4) No land, building or other premises or place or any part thereof acquired or used for the purposes of a hospital shall be sold, leased, mortgaged or otherwise disposed of without the approval of the Minister. R.S.O. 1970, c. 378, s. 4 (4); 1972, c. 90, s. 4 (4). <sup>Approval of sales</sup>

(5) Any approval given or deemed to have been given under this Act in respect of a hospital may be suspended by the Minister or revoked by the Lieutenant Governor in Council. R.S.O. 1970, c. 378, s. 4 (5); 1972, c. 90, s. 4 (5). <sup>Suspension or revocation of approval</sup>

5. The Minister may pay provincial aid to hospitals in such amounts, in such manner and at such times as the regulations prescribe. R.S.O. 1970, c. 378, s. 5; 1972, c. 90, s. 5. <sup>Grants to hospitals</sup>

6. The Minister may make loans to hospitals under such terms and conditions, in such amounts, in such manner and at such times as the regulations provide. R.S.O. 1970, c. 378, s. 6; 1972, c. 90, s. 6. <sup>Loans to hospitals</sup>

7. Every hospital has power to carry on its undertaking as may be authorized by any general or special Act under which it was created, established, incorporated or empowered so to do. 1972, c. 90, s. 7, *part*. <sup>Powers</sup>

8. Subject to the *Expropriations Act*, a board may expropriate any real property necessary for the purpose of properly conducting the hospital. 1972, c. 90, s. 7, *part*. <sup>Expropriation R.S.O. 1980, c. 148</sup>

9.—(1) A hospital shall pass by-laws as prescribed by the regulations, subject to the approval of the Minister. 1972, c. 90, s. 8 (1). <sup>By-laws</sup>

(2) A hospital shall pass, amend or revise its by-laws and submit them to the Minister after receiving notice to do so as prescribed by the regulations. R.S.O. 1970, c. 378, s. 9 (2); 1972, c. 90, s. 8 (2). <sup>Idem</sup>

Idem

(3) No by-law, or amendment to or revision of a by-law, made under subsection (2) has any force or effect until it is approved by the Lieutenant Governor in Council upon the recommendation of the Minister. 1972, c. 90, s. 8 (3).

Rotation of  
directors  
R.S.O. 1980,  
c. 95

(4) Notwithstanding the *Corporations Act*, a hospital may provide by by-law for the election and retirement of directors in rotation, but in that case no director shall be elected for a term of more than five years and at least four directors shall retire from office each year.

Special  
directors

(5) Notwithstanding the *Corporations Act*, a hospital may provide by by-law for the appointment by its board, in recognition of contributions or of long or special services to the hospital considered worthy of such appointment, of life directors, term directors and honorary directors.

Idem

(6) A life director may attend meetings of the board during his lifetime and vote in person but not by proxy thereat, and the number of life directors at any time shall not exceed the number of elected and *ex officio* directors.

Idem

(7) A term director may attend meetings of the board for a term not exceeding ten years as specified in the by-law and vote in person but not by proxy thereat.

Idem

(8) An honorary director may attend meetings of the board and may act in an advisory capacity without the right to vote or may vote in person but not by proxy as determined by the by-law.

Idem

(9) The by-law may provide for the appointment of members or retired members of the medical, dental, nursing or administrative staffs of the hospital as honorary directors of the hospital.

Idem

(10) The number of honorary directors with the right to vote at board meetings plus the number of term directors at any time shall not exceed the number of elected and *ex officio* directors. R.S.O. 1970, c. 378, s. 9 (4-10).

Idem

(11) Notwithstanding the *Corporations Act*, upon the recommendation of the Minister, the Lieutenant Governor in Council may appoint one or more provincial hospital representatives to the board of a hospital for a term of office of not more than three years and such provincial hospital representatives shall have all the rights and responsibilities of elected directors. 1972, c. 90, s. 8 (4).

**10.** No member of a committee of the medical staff of a hospital or of the board or Appeal Board or of the staff thereof and no witness in a proceeding or investigation before such committee or board is liable for anything done or said in good faith in the course of a meeting, proceeding, investigation or other business of the committee or board. 1972, c. 90, s. 9. Protection from liability

**11.** The medical record compiled in a hospital for a patient or an out-patient is the property of the hospital and shall be kept in the custody of the administrator. R.S.O. 1970, c. 378, s. 11. Medical records

**12.** Notwithstanding the *Corporations Act*, no hospital by-law authorizing the board to elect a management committee and to delegate to the management committee any powers of the board requires to be confirmed at a general meeting of the members of the hospital corporation. R.S.O. 1970, c. 378, s. 12. Management committee  
R.S.O. 1980,  
c. 95

**13.** No member of a hospital corporation shall vote by proxy at any meeting of the corporation. R.S.O. 1970, c. 378, s. 13. No voting by proxy

**14.—(1)** Notwithstanding the *Corporations Act*, it is not necessary to send written notice of any general or special meeting of the members of the hospital corporation to each member of the hospital corporation. Notice of hospital meetings

**(2)** It is sufficient notice of any general or special meeting of the members of the hospital corporation if notice is given by publication at least once a week for two successive weeks next preceding the meeting in a newspaper or newspapers circulated in the municipality or municipalities in which members of the hospital corporation reside as shown by their addresses on the records of the hospital. R.S.O. 1970, c. 378, s. 14. Idem

**15.** The Minister may designate one or more officers of the Ministry to be inspectors for the purposes of this Act and the regulations. 1972, c. 90, s. 10. Inspectors

**16.** No hospital for chronically ill persons shall admit as a patient an indigent person or the dependant of an indigent person until such person or dependant is certified in accordance with the regulations to be a chronically ill person. R.S.O. 1970, c. 378, s. 16. Admission of chronically ill persons

Admission  
of patients**17.** Where,

- (a) a person has been admitted to a hospital by a physician pursuant to the regulations; and
- (b) such person requires the level or type of hospital care for which the hospital is approved by the regulations,

the hospital shall accept such person as a patient. 1972, c. 90, s. 11.

Refusal of  
admission**18.** Nothing in this Act requires any hospital to admit as a patient,

- (a) any person who is not a resident or a dependant of a resident of Ontario, unless by refusal of admission life would thereby be endangered; or
- (b) any person who merely requires custodial care. R.S.O. 1970, c. 378, s. 18.

Custodial  
care

**19.** Where a patient is an indigent person or a dependant of an indigent person and is declared by the attending physician not to require continued medical and skilled nursing care in a hospital but only requires custodial care, the municipality in which such person was resident at the time of admission is liable to the hospital for payment of the *per diem* rate established for that hospital by the Minister from the twenty-first day after the day on which notice that the patient is declared to require only custodial care has been sent by the superintendent of the hospital by registered mail to the clerk of the municipality until the patient leaves the hospital. R.S.O. 1970, c. 378, s. 19 (1); 1972, c. 90, s. 12 (1).

Facilities  
for students

**20.** Subject to any existing agreement relating thereto, every hospital receiving provincial aid shall provide such facilities as the regulations require for dental students, student dietitians, medical students and interns, students of nursing, student laboratory technicians, student physiotherapists, student occupational therapists, student X-ray technicians and student social workers. R.S.O. 1970, c. 378, s. 20.

## Interns

R.S.O. 1980,  
c. 196

**21.** No person shall be employed as an intern in a hospital unless he is registered under Part III of the *Health Disciplines Act*. R.S.O. 1970, c. 378, s. 21.

**22.** In the event of the death in a hospital of a patient who is an indigent person, or the dependant of an indigent person, the municipality in which he was a resident at the time of his admission shall pay to the hospital any expenses of his burial that it incurs. 1972, c. 90, s. 14.

Burial expenses by municipality

**23.** Where under this Act the charges for burial expenses of a deceased patient are payable by a municipality, the hospital to which the patient was admitted shall from time to time render to the clerk of the municipality statements of account of any such charges with full particulars thereof, and if the amount of any such account is not paid within a reasonable time after it has been rendered it may be recovered as a debt in any court of competent jurisdiction. R.S.O. 1970, c. 378, s. 32; 1972, c. 90, s. 16.

Statements of account to be rendered

**24.** Upon the payment by a municipality of any account rendered to it by a hospital for any expenses of burial of a deceased patient, the municipality may recover from the patient, or, in the event of his decease, from his estate or personal representatives, or, in the case of a dependant, from any person liable in law with respect to the dependant, the amount of the payment so made, and the same may be recovered as a debt in any court of competent jurisdiction. R.S.O. 1970, c. 378, s. 33 (1); 1972, c. 90, s. 17 (1).

Municipal right of recourse against patient

**25.** Upon payment by a municipality to a hospital of any account for expenses of burial of a deceased patient by reason of the patient having been assumed to be a resident in the municipality and it being ascertained that the patient was not resident therein but at the time of admission to the hospital was resident in another municipality in Ontario, the municipality that made the payment may recover the amount thereof as a debt from the municipality in which the patient was resident, and upon payment by that municipality it is entitled to exercise the rights of recovery conferred under section 24. R.S.O. 1970, c. 378, s. 34; 1972, c. 90, s. 18.

Municipal right of recourse against proper municipality

**26.** Any person who is an Indian within the meaning of the *Indian Act* (Canada) shall be deemed for the purpose of this Act not to have established residence in unorganized territory. R.S.O. 1970, c. 378, s. 35.

Indians R.S.C. 1970, c. I-6

**27.** Every person who contravenes or is a party to the contravention, directly or indirectly, of any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not less than \$25 and not more than \$500. R.S.O. 1970, c. 378, s. 36.

Offence



Limitation  
of action

**28.** Any action against a hospital or any nurse or person employed therein for damages for injury caused by negligence in the admission, care, treatment or discharge of a patient shall be brought within two years after the patient is discharged from or ceases to receive treatment at the hospital and not afterwards. R.S.O. 1970, c. 378, s. 37; 1972, c. 90, s. 19.

Regulations  
for hospitals

**29.**—(1) Subject to the approval of the Lieutenant Governor in Council, the Minister may make such regulations with respect to hospitals as are considered necessary for,

- (a) their creation, establishment, construction, alteration, equipment, safety, maintenance and repairs;
- (b) their classifications, grades and standards;
- (c) their inspection, control, government, management, conduct, operation and use;
- (d) prescribing the matters upon which by-laws are to be passed by hospitals;
- (e) prescribing the powers and duties of inspectors;
- (f) providing that certain persons shall be by virtue of their office members of the board in addition to the members of the board appointed or elected in accordance with the authority whereby the hospital is established;
- (g) their administrators, staffs, officers, servants and employees and the powers and duties thereof;
- (h) providing for the certification of chronically ill persons and the method of referring such persons to hospitals for chronically ill persons;
- (i) providing for the method of referring convalescent persons to hospitals for convalescent persons;
- (j) the admission, treatment, care, conduct, control and discharge of patients or any class of patients;
- (k) prescribing the organization of the medical staff of a hospital including the composition and duties of

admission and discharge committees and other committees of the medical staff;

- (l) the classification of patients and the lengths of stay of and the rates and charges for patients;
- (m) requiring a written agreement between each Group A hospital and the university with which the hospital is affiliated for the purpose of providing instruction in the hospital to medical and dental students of the university, and prescribing provisions that shall be included in any such agreement;
- (n) prescribing the facilities that hospitals shall provide for dental students, student dietitians, medical students and interns, students of nursing, student laboratory technicians, student physiotherapists, student occupational therapists, student X-ray technicians and student social workers;
- (o) the records, books, accounting systems, audits, reports and returns to be made and kept by hospitals;
- (p) the reports and returns to be submitted to the Ministry by hospitals;
- (q) prescribing the requirements to be satisfied for obtaining a valid consent for any surgical operation, diagnostic procedure or medical treatment, the method of obtaining such consent, the conditions under which such consent may be dispensed with and specifying the age or ages at which and under what conditions a patient may give a valid consent for a surgical operation, diagnostic procedure or medical treatment to be performed on himself;
- (r) prescribing the rates for out-patient services, including emergency cases;
- (s) prescribing the classes of grants by way of provincial aid and the methods of determining the amounts of grants and providing for the manner and times of payment and the suspension and withholding of grants and for the making of deductions from grants;
- (t) providing for loans to hospitals under section 6. R.S.O. 1970, c. 378, s. 39 (1); 1972, c. 90, s. 21 (1-6).

(2) The Minister may from time to time declare all or any <sup>idem</sup> of the regulations to be in force with respect to all hospitals

or any one or more hospitals or classes thereof and for such period or periods of time as the Minister considers expedient. R.S.O. 1970, c. 378, s. 39 (2); 1972, c. 90, s. 21 (7).

Notice to college of disciplinary action against physician

30. Where,

- (a) the application of a physician for appointment or reappointment to a medical staff of a hospital is rejected by reason of his incompetence, negligence or misconduct;
- (b) the privileges of a member of a medical staff of a hospital are restricted or cancelled by reason of his incompetence, negligence or misconduct; or
- (c) a physician voluntarily or involuntarily resigns from a medical staff of a hospital during the course of an investigation into his competence, negligence or conduct,

the administrator of such hospital shall prepare and forward a detailed report to The College of Physicians and Surgeons of Ontario. 1972, c. 90, s. 22.

Advice as to quality of professional work in hospitals without departments

31.—(1) Where the medical staff of a hospital is not divided into medical departments, the chief of the medical staff or, where there is no chief, the president of the medical staff may be made responsible by by-law of the hospital to advise the medical advisory committee with respect to the quality of medical diagnosis, care and treatment provided to the patients and out-patients of the hospital.

Idem, in hospitals with departments

(2) Where the medical staff of a hospital is divided into medical departments, the head of each department may be made responsible by by-law of the hospital, through and with the chief of the medical staff or, where there is no chief, through and with the president of the medical staff, to advise the medical advisory committee with respect to the quality of medical diagnosis, care and treatment provided to the patients and out-patients of his department.

Duty where serious problem exists

(3) Where an officer of the medical staff who is responsible under subsection (1) or (2) becomes aware that, in his opinion a serious problem exists in the diagnosis, care or treatment of a patient or out-patient, he shall forthwith discuss the condition, diagnosis, care and treatment of the patient or out-patient with the attending physician, and, if changes in diagnosis, care or treatment satisfactory to him are not made promptly, he shall assume forthwith the duty of investigating, diagnosing, prescribing for and treating the patient or out-

patient, as the case may be, and shall notify the attending physician, the administrator and, if possible, the patient or out-patient that the member of the medical staff who was in attendance will cease forthwith to have any hospital privileges as the attending physician for the patient or out-patient.

(4) Where the officer of the medical staff who is responsible under this section is unable to discuss the problem with the attending physician as required by subsection (3), he shall proceed with his duties as prescribed in this section as if he had had the discussion with the attending physician.

Where no discussion with attending physician

(5) The officer of the medical staff who is responsible under this section shall inform two members of the medical advisory committee within twenty-four hours of his action under subsection (3) or (4) and shall file a written report with the secretary of the medical advisory committee within forty-eight hours of his action under subsection (3) or (4).

Duty of responsible officer to report action

(6) The officer of the medical staff who is responsible under this section may delegate any or all of his responsibilities and duties under this section to a member of his medical staff or of his medical department, as the case may be, but he remains accountable to the medical advisory committee for the management of the patient by that member of the medical staff to whom any such responsibility or duty is delegated.

Delegation of responsibilities and duties

(7) Where the medical advisory committee concurs in the opinion of the officer of the medical staff who has taken action under subsection (3) or (4) that the action was necessary, the secretary of the medical advisory committee shall forthwith make a detailed written report to the administrator of the problem and the action taken. R.S.O. 1970, c. 378, s. 41.

Report to administrator

**32.**—(1) Every board shall establish a medical advisory committee composed of such elected and appointed members of the medical staff as are prescribed by the regulations.

Medical advisory committee

(2) The medical advisory committee shall consider and make recommendations to the board respecting any matter referred to it under section 34 and perform such other duties as are assigned to it by or under this or any other Act or by the board. 1972, c. 90, s. 23, *part.*

Duties

**33.** The board may,

Powers of board re medical staff

(a) appoint physicians to a group of the medical staff of the hospital established by the by-laws;

- (b) determine the hospital privileges to be attached to the appointment of a member of the staff; and
- (c) revoke or suspend the appointment of or refuse to reappoint a member of the medical staff. 1972, c. 90, s. 23, *part*.

Application for medical staff appointment, hospital privileges, etc.

34.—(1) Every physician is entitled to apply for an appointment or a reappointment to any group of the medical staff of a hospital established by its by-laws or for a change in hospital privileges and, upon receipt of a written request, an administrator shall supply an appropriate application form.

Term of appointment

(2) Every physician appointed to the medical staff of a hospital shall be appointed for a period of not more than one year.

Idem

(3) Each application shall be submitted to the administrator who shall immediately refer such application to the medical advisory committee.

Recommendation of medical advisory committee

(4) Each application shall be considered by the medical advisory committee which shall make a recommendation thereon in writing to the board within sixty days from the date of the application.

Idem

(5) Notwithstanding subsection (4), a medical advisory committee may make its recommendation later than sixty days after the date of the application if, prior to the expiry of the sixty day period, it indicates in writing to the board and the applicant that a final recommendation cannot yet be made and gives written reasons therefor.

Notice of recommendation

(6) The medical advisory committee shall give written notice to the applicant and the board of its recommendation.

Idem

(7) A notice under subsection (6) shall inform the applicant that he is entitled to,

- (a) written reasons for the recommendation if a request is received by the medical advisory committee within seven days of the receipt by the applicant of a notice of the recommendation; and
- (b) a hearing before the board if a written request is received by the board and the medical advisory committee within seven days of the receipt by the applicant of the written reasons under clause (a),

and he may so require such reasons and hearing. 1972, c. 90, s. 23, *part*.

**35.** Where the applicant does not require a hearing by the board in accordance with subsection 34 (7), the board may implement the recommendation of the medical advisory committee. 1972, c. 90, s. 23, *part*.

Where no hearing required

**36.—(1)** Where an applicant requires a hearing by the board in accordance with subsection 34 (7), the board shall appoint a time for and hold the hearing and shall decide the matter in the exercise of its powers under clause 33 (a) or (b).

Powers of board where hearing

(2) The applicant or member, the medical advisory committee and such other persons as the board may specify are parties to proceedings before the board under this section.

Parties

(3) Where, within the time prescribed therefor, a member has applied for reappointment, his appointment shall be deemed to continue,

Continuation of appointment pending re-appointment

(a) until the reappointment is granted; or

(b) where he is served with notice that the board refuses to grant the reappointment, until the time for giving notice requiring a hearing by the Appeal Board has expired and, where a hearing is required, until the decision of the Appeal Board has become final.

(4) Members of the board holding a hearing shall not have taken part in any investigation or consideration of the subject-matter of the hearing before the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Members holding hearing not to have taken part in investigation, etc.

(5) Where a hearing by the board is required, the person requiring the hearing shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Notice of hearing

(6) The findings of fact of the board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

Findings of fact

R.S.O. 1980, c. 484

Only members at hearing to participate in decision

(7) No member of the board shall participate in a decision of the board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the board shall be given unless all members so present participate in the decision.

Extension of time for giving notice

(8) Notwithstanding any limitation of time for the giving of any notice requiring a hearing by the board fixed by or under any Act, and where it is satisfied that there are *prima facie* grounds for granting relief and that there are reasonable grounds for applying for the extension, the board may extend the time for giving the notice either before or after expiration of the time so limited, and may give such directions as it considers proper consequent upon such extension. 1972, c. 90, s. 23, *part.*

Hospital Appeal Board established

**37.**—(1) The Hospital Appeal Board is established and shall be composed of five members appointed by the Lieutenant Governor in Council, one of whom shall be designated by the Lieutenant Governor in Council as chairman.

Members of Appeal Board

(2) The Appeal Board shall be composed of two members who shall be physicians, one member of the legal profession or judiciary and two members representing the public interest, one of whom is a member of a board.

Membership restriction

(3) No employee of the Government of Ontario or of any agency of the Crown shall be appointed a member of the Appeal Board.

Quorum

(4) Three members of the Appeal Board constitute a quorum.

Remuneration

(5) The members of the Appeal Board shall be paid such remuneration for their services as the Lieutenant Governor in Council determines. 1972, c. 90, s. 23, *part.*

Reasons and appeal

**38.**—(1) Any,

- (a) applicant for appointment or reappointment to the medical staff of a hospital who was a party to a proceeding before the board and who considers himself aggrieved by a decision of the board not to appoint or not to reappoint him to the medical staff; or
- (b) member of the medical staff of a hospital who considers himself aggrieved by any decision revoking or suspending his appointment to the medical

staff or under section 31 or the by-laws cancelling, suspending or substantially altering his hospital privileges,

is entitled to,

- (c) written reasons for the decision if a request is received by the board, person or body making the decision within seven days of the receipt by the applicant or member of a notice of the decision; and
- (d) a hearing before the Appeal Board if a written request is received by the Appeal Board and the board, person or body making the decision within seven days of the receipt by the applicant or member of the written reasons for the decision. 1973, c. 164, s. 1.

(2) Section 36 applies to a hearing before the Appeal Board in the same manner as if the party or member were an applicant entitled to a hearing before a board under section 34. Procedure at hearing

(3) The board and person mentioned in subsection (1) and such other persons as the Appeal Board may specify are parties to proceedings before the Appeal Board under this section. Parties

(4) Oral evidence taken before the Appeal Board at a hearing shall be recorded and, if so required, copies of a transcript thereof shall be furnished upon the same terms as in the Supreme Court. Recording of evidence

(5) After a hearing, the Appeal Board may by order confirm the decision appealed from or direct the board or other person or body making the decision appealed from to take such action as the Appeal Board considers ought to be taken in accordance with this Act, the regulations and the by-laws, and for such purposes may substitute its opinion for that of the board, person or body making the decision appealed from. Powers of Appeal Board

(6) The Appeal Board may at any time during a hearing and prior to rendering a decision refer any matter to any professional organization for the purpose of obtaining expert assistance or a formal report. 1972, c. 90, s. 23, *part*. Referral of matters to professional organization for report

**39.** Service of a notice under sections 34, 36 and 38 may be made personally or by registered mail addressed to the person to be served at his last known address and, where the notice is served by registered mail, it shall be deemed that the notice was served on the third day after the day of mailing Service of notice



unless the person to be served establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive it until a later date. 1972, c. 90, s. 23, *part*.

Appeal from  
decision of  
Appeal Board

40.—(1) Any party to proceedings before the Appeal Board may appeal from its decision to the Divisional Court in accordance with the rules of court.

Record to be  
filed in court

(2) Where any party appeals from a decision of the Appeal Board, the Appeal Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of the evidence if it is not part of the Appeal Board's record, shall constitute the record in the appeal.

Powers of  
court on  
appeal

(3) An appeal under this section may be made on questions of law or fact or both and the court may exercise all the powers of the Appeal Board, and for such purpose the court may substitute its opinion for that of the Appeal Board or board or other person or body authorized to make the decision appealed from, or the court may refer the matter back to the Appeal Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1972, c. 90, s. 23, *part*.