

**MEDICAL SERVICES COMMISSION
DIAGNOSTIC FACILITY HEARING PRACTICES AND
PROCEDURES**

The Medical Services Commission (MSC) delegates its authority to conduct diagnostic facility hearings under section 33 of the *Medicare Protection Act* to hearing panels. The MSC Chair will appoint hearing panels as required from time to time from a roster of individuals.

Introduction

Under the *Medicare Protection Act*, the MSC may add new conditions or amend existing conditions to an approval of a diagnostic facility. This may be done either on application by the facility owner, or on the MSC's own initiative [s. 33(2)].

The MSC also has authority to suspend, amend or cancel an approval if an approved diagnostic facility has contravened the Act, the regulations, or a condition of the approval. [s. 33(4)].

Before taking action under either s. 33(2) or 33(4), the MSC is required to provide the owner of the facility an opportunity to be heard. Usually, a hearing is requested for one of two reasons:

- (a) the Advisory Committee on Diagnostic Facilities (the ACDF) has recommended to the MSC that an application to amend or add conditions to an existing approval be denied; or
- (b) the ACDF has recommended to the MSC that an approval be suspended, amended or cancelled because the facility owner is alleged to have contravened the Act, the regulations, or a condition on the approval.

When such a recommendation is made, the Medical Services Branch (MSB) sends the facility owner notice of the ACDF's recommendation, advising of the circumstances giving rise to the MSC's intended action, and that the facility owner has the right to a hearing, to be requested within 21 days of receiving the notice [s.33 (5)(c)]. The notice also indicates that the MSC may make an order in the absence of the facility owner if the owner does not request a hearing or fails to attend the hearing.

The following information is an overview of the pre-hearing and hearing process.

The MSC may delegate its powers to conduct a hearing to a person or panel (either referred to as the “Hearing Panel”), as follows:

- (a) in respect of a hearing arising from s.33(2), the MSC may delegate its powers or duties to a single person panel;
- (b) in respect of a hearing arising from s.33(4), the MSC may delegate its powers or duties to a panel consisting of three or more delegates of the MSC, with at least one representative each of the government, the British Columbia Medical Association, and the public.

Pre-Hearing Process

The MSB will provide written notice to the facility owner that the ACDF is recommending that the MSC deny an application under s.33 (2) or that the MSC take action under s.33 (4). The facility owner will be advised of the reasons for the recommendation and of the right to a hearing.

A facility owner may choose one of two hearing processes – either an oral hearing or a hearing based on written submissions. In the case of a hearing by written submissions, it is not necessary for the facility owner to appear before the Hearing Panel. The facility owner should indicate at the time of requesting a hearing which type of hearing process he wishes to have.

The facility owner is responsible for the facility’s costs associated with the hearing.

(i) Documentation:

When a hearing is requested, the MSB prepares a File Brief indicating the reasons for the ACDF’s recommendation that the MSC deny an application under s. 33(2) or that the MSC take action under s. 33(4). A copy of the File Brief is forwarded to the facility owner for his review and response, and a copy is also forwarded to the MSC Secretariat.

The facility owner is required to provide a written summary of facts and argument in support of his position. This summary, along with any supporting documentation, must be provided to the MSC Secretariat within 14 working days of the facility owner receiving the MSB File Brief, for distribution to the Hearing Panel. A minimum of 8 copies must be provided.

Written submissions should contain materials the facility owner considers relevant to the issue. Since the Hearing Panel will have received the MSB File Brief, it is not necessary to resubmit any material already included in the MSB File Brief. However, if the facility owner has further materials that may have a bearing on the Hearing Panel's determination, they should be included with the submission, to provide the Hearing Panel with all information necessary for it to make a decision.

If the facility owner provides information that was not previously considered by the ACDF, and had the ACDF known a different recommendation could have been possible, the MSC Secretariat may postpone the hearing in order for the ACDF to consider the new information.

(ii) Scheduling of the Hearing:

The MSC Secretariat will schedule a hearing at the convenience of Hearing Panel member(s) and the facility owner to be held within 60 days of receipt by the MSC Secretariat of the facility owner's written summary of facts and argument.

(iii) Legal Representation and Witnesses:

It is not essential for the facility owner to appear before the Hearing Panel, although he may choose to do so, with or without legal counsel. The facility owner may also choose not to appear, but have legal counsel appear on his behalf. When the facility owner is initially contacted by the MSC Secretariat to schedule the hearing, the facility owner should advise whether he will appear before the Hearing Panel, and whether legal counsel will be present.

Also, when the facility owner is contacted by the MSC Secretariat to schedule the hearing, the facility owner should advise the MSC Secretariat if witnesses will be attending to provide information to the Hearing Panel, and if so, provide a general description of the nature of the information each witness will provide, and the time required for the testimony of each witness. The facility owner should also indicate any specific scheduling requirements around the attendance of witnesses. The Hearing Panel will receive information from witnesses by telephone conference call, if required.

(iv) Deemed Withdrawal:

If the required documentation is not provided within the time period specified in advance of the hearing, the Hearing Panel can deem the request for a hearing withdrawn, and make a decision, in the absence of both parties, on whether or not to accept the recommendation of the ACDF.

If the facility owner advises the MSC Secretariat that he wishes to withdraw the request for a hearing, the Hearing Panel will make a decision, in the absence of both parties, on whether or not to accept the recommendation of the ACDF.

(v) Adjournment:

Once a hearing has been scheduled, the MSC Secretariat will not usually grant an adjournment, unless there are extraordinary circumstances and the adjournment will not cause undue prejudice to the other parties.

To request an adjournment of a hearing, a facility owner must apply to the MSC Secretariat in writing and give reasons why the adjournment is required. The application for an adjournment should be made at least 14 working days prior to the scheduled hearing date.

Hearings

As noted above, a facility owner may choose one of two hearing processes – either an oral hearing or a hearing based on written submissions.

(i) Oral Hearings:

The hearing itself is informal. For example, participants are able to ask questions of each other, and information is not provided under oath. The hearing is not intended to be adversarial. The purpose of the hearing is to put before the Hearing Panel all the information it needs to make an informed decision on the issues.

At the hearing, a representative of the ACDF will speak first, presenting the ACDF's recommendation and reasons. The Hearing Panel will give the facility owner the opportunity to question the ACDF representative, and then the Hearing Panel may question the ACDF representative. The facility owner will then have the opportunity to provide information to the Hearing Panel. The facility owner should also anticipate questions from the ACDF representative and from the Hearing Panel. The ACDF representative and the facility owner will each then make a summary submission. As before, the Hearing Panel will hear from the ACDF representative first, and then from the facility owner or his representative. If necessary, both parties will be given an opportunity to present a short rebuttal.

Absent unusual circumstances, a maximum of 3 hours will be allowed for the hearing.

If the Hearing Panel requires additional information from either the facility owner or the ACDF representative, it may request that information. In that case, the other party will be given the opportunity to review the new materials and respond

in writing within the time period directed by the Hearing Panel. If required, the hearing may be reconvened for further oral presentation.

(ii) Hearings by Written Submission:

As indicated above, the facility owner will have the option of requesting a hearing by written submissions only, in lieu of personal attendance. Again, the facility owner will be

required to provide written submissions and any supporting documentation to the MSC Secretariat no later than 14 working days from receipt of the MSB File Brief.

The Hearing Panel will review and consider the MSB File Brief and the written submission of the facility owner, basing its decision on both positions as presented in writing. No representative of the ACDF will be present at a hearing by written submission.

After reviewing the written submissions, if the Hearing Panel requires additional information from either the facility owner or the ACDF representative, it may request that information. In that case, the other party will be given the opportunity to review the new materials and respond in writing within the time period directed by the Hearing Panel.

(iii) Miscellaneous:

Whether the hearing is oral or by written submission, the Hearing Panel may seek outside expert opinion. In such an event, the parties will be provided with the opinion, and given an opportunity to respond in writing within the time period directed by the Hearing Panel.

The only information the Hearing Panel will consider in making its decision is the information the parties present through the pre-hearing documents, information provided by witnesses at the hearing, submissions made by the parties at the hearing, and, in the case of a hearing by written submission, the information and written submissions provided by the parties. Other than in exceptional circumstances, the scope of the hearing is limited to the information relevant at the time the ACDF initially made its recommendation.

Unless outside expert opinion is sought by the Hearing Panel, the Hearing Panel will notify the facility owner or his legal counsel and the ACDF of its decision within 60 working days of the hearing. If a decision cannot be made within 60 working days, the MSC Secretariat will advise both the facility owner and the ACDF to that effect and a new decision date will be given. The expectation is that no decision will exceed 90 days from the date of the hearing.