DAVIDSON V. SUNNYBROOK HEALTH SCIENCES CENTRE

HPARB DEFERS TO HOSPITAL’S ALLOCATION OF RESOURCES TO UPHOLD STRATEGIC PLAN

Dr. Davidson is a surgical oncologist who has had privileges at Sunnybrook Health Sciences Centre’s Department of Otolaryngology since 1994. In 2004 the Department started using operating room resources at its then Women’s College Hospital site. Dr. Davidson used the majority of that OR time. Although Women’s College Hospital and Sunnybrook demerged in 2006, the Department continued to have OR time at the Women’s College site. In September 2010, Women’s College transitioned to an ambulatory care facility with two 23 hour beds and no in-patient beds. Dr. Davidson wrote to the Chief of the Department in May 2010 to request additional OR time at Sunnybrook as she felt the type of procedures she could perform at Women’s College would change in September 2010. The Chief of the Department advised in a written reply that the request for additional OR time could not be accommodated. Dr. Davidson appealed that decision. She maintained that the refusal to provide greater OR time at Sunnybrook to reflect the changes at Women’s College constituted a substantial alteration of her hospital privileges.

The Health Professions Appeal and Review Board (“HPARB”) dismissed Dr. Davidson’s appeal finding that there was no substantial alteration of her privileges. Dr. Davidson was able to continue filling her OR days at Women’s College and her average of one day per month at Sunnybrook. She was not financially disadvantaged by her OR allocation. HPARB noted that the changes at Women’s College were beyond the control of Dr. Davidson or the Chief of the Department.

HPARB held that in the event it is wrong in finding that there was no decision that substantially altered Dr. Davidson’s hospital privileges, it “would nevertheless not have interfered with the allocation of OR time, which we conclude is generally best managed internally by the physicians, the administration and the committees of the Respondent that face this issue (…) the amount of OR time for the OTL Department is finite as it is for all departments. We accept the evidence of Respondent’s witnesses of the intention to focus on major head and neck surgeries rather than endocrine procedures” [the latter of which were the focus of Dr. Davidson’s practice since 2006].

In reaching this deferential position on the allocation of finite health resources, HPARB referenced evidence of Sunnybrook’s strategic plan. It found that the head of Sunnybrook’s Division of General Surgery and the Chief of the Odette Cancer Program “perhaps best summarized the difficulties with the allocation of OR time for surgeons when he stated that physicians live in a ‘world of unlimited desires and limited resources.’” That witness stated that he was “opposed to the Respondent being ‘ordered’ to grant Dr. Davidson more OR time as this would, in effect, be disruptive of the Respondent’s system for allocating such time” in accordance with its strategic plan. Sunnybrook’s Executive Vice President similarly described OR time as “a precious resource to be managed” and that the “type of endocrine surgeries being performed by Dr. Davidson were not a priority as they could be facilitated at other hospitals.” Ultimately HPARB agreed.