SUBJECT: Communication between Medical Officer of Health & Board of Health
PH06038 (City Wide)

RECOMMENDATION:

That the policy regarding communication as described in Appendix A attached to Report PH06038 be approved.

EXECUTIVE SUMMARY:

At its September 27, 2006 meeting, Council directed staff to report at the next Board of Health meeting on communication between the Medical Officer of Health and the Board. A draft policy is proposed herein.

The policy identifies specific communications in three areas: orientation, program updates & changes in staffing, finances and service levels, and specific incident communications related to communicable disease and health hazard investigations.

Effective communication between the Medical Officer of Health and the Board of Health is essential for the Board’s effective discharge of its governance role and for the smooth delivery of mandated services to the citizens of Hamilton. The Health Protection and Promotion Act and the Personal Health Information Protection Act place significant limits on the types of information that may be communicated. The impact of these limits upon
effective communication on matters of public health importance is addressed in the body of this report.

A survey of similar health units in Ontario (population in the 250,000 – 1 million range, some autonomous boards, some regional government boards) identified no Board with an explicit policy in this area. If implemented, the draft policy in Hamilton would appear to be unique in Ontario.

**BACKGROUND:**

On September 18, 2006, PHS staff briefed members of the BOH regarding an ongoing investigation into an increase in human legionella cases in Hamilton. PHS staff, supported by advice from the Ministry of Health and Long-Term Care, had concluded that there appeared to be no ongoing risk to the public, and that the source, if it were ever identified, had been eliminated.

On September 22, 2006, the Hamilton Spectator, acting on what it described as a confidential tip, requested that PHS staff, the City Manager and the Mayor meet with their editorial board. Significant local media coverage ensued. At its September 27, 2006 meeting, Council passed the following motion:

> That the City Manager and the Medical Officer of Health report to the next Board of Health meeting with a policy outlining a proactive, preventative and clearly outlined approach to the reporting relationship by the Medical Officer of Health to the Board of Health regarding future matters of potential concern to our community

**ANALYSIS/RATIONALE:**

The use of ‘reporting relationship’ in this motion may be understood as reporting in the sense of organizational form and reporting in the sense of communication. Both are addressed below.

**Reporting: Organizational Form**

The *Health Protection and Promotion Act* (HPPA) provides the legislative framework for the reporting relationship between the Medical Officer of Health (MOH) and the Board. The move from a committee structure to the current Board, effective February, 2006, has addressed potential non-conformance of the previous committee-based reporting structure. On the matter of the reporting relationship of the MOH, Section 67(1) of the HPPA states that:

> The medical officer of health of a board of health reports directly to the board of health on issues relating to public health concerns and to public health programs and services under this or any other Act
and Section 67(2) of the HPPA provides for the direction of staff by the MOH:

> The employees of and the persons whose services are engaged by a board of health are subject to the direction of and are responsible to the medical officer of health of the board if their duties relate to the delivery of public health programs or services under this or any other Act.

The HPPA also speaks to the role of the Board of Health. Section 4(a) states that:

> Every board of health shall superintend, provide or ensure the provision of the health programs and services required by this Act and the regulations to the persons who reside in the health unit served by the board

And Section 61 of the HPPA restates this material thusly,

> Every board of health shall superintend and ensure the carrying out of parts II, III, and IV (Sections 1 through 40 of the HPPA) and the regulations relating to those Parts in the health unit served by the board of health

Whether ‘superintend, provide or ensure the provision of…’ or to ‘superintend and ensure the carrying out of…’ these sections describe the Board’s obligation. Most Boards use communications such as annual reports and reports received at Board meetings as a means to ensure they fulfil these duties.

Taken together, these sections of the HPPA provide the legal basis for the practice that the staff report to the MOH and the MOH to the Board, and the Board to its community through such means as annual reports, reports received in meetings, and accountability tools such as the former Mandatory Programs Indicator Questionnaire (MPIQ). Recent governance failures in local public health in Ontario have highlighted what Graham Scott, in his assessment of the now-dissolved Muskoka-Parry Sound Board of Health, described as:

> The MOH position is both demanding and pivotal in the provincial-municipal interface….leadership by the MOH and the policy and approval oversight by the Board should provide the local municipalities and their residents with assurance that the public health is protected and that their public health programs are delivered at a reasonable cost to their taxpayers (p. 9, Assessors Report on the Muskoka-Parry Sound Health Unit)

Thus, the HPPA is explicit about the reporting relationship of the MOH to the Board and the evidence of practice in the province points to a practical delineation of spheres of activity – leadership in medical and administrative matters to the MOH with policy and approval oversight reserved for the Board.
Reporting: Communication

The recent media coverage of PHS' investigation of an increase in human legionella cases raises an opportunity to understand more clearly the nature and types of information that could be communicated between PHS staff (the MOH) and the Board. The proposed draft policy (Appendix A) identifies several levels of communication.

Sections 25 through 30 of the HPPA provide for the reporting, by physicians and other persons required to make reports, of specified communicable diseases to the MOH. Regulation 569 prescribes the specific information that is to be included in a report and lists the diseases for which reports are required.

Specified information for reportable diseases must be provided to public health and no patient consent provisions apply. However, the inclusion of personal health information in the reports from physicians and other persons set out in Regulation 569 creates obligations for the MOH under the Personal Health Information Protection Act (PHIPA) as a health information custodian. Once received by the MOH, such information may not be shared without the patient’s consent, except in circumstances described in PHIPA Sections 38-50. In the context of a public health investigation, Section 39(2) provides for sharing information with specified parties:

A health information custodian may disclose personal health information about an individual,

(a) to the Chief Medical Officer of Health or a medical officer of health within the meaning of the Health Protection and Promotion Act if the disclosure is made for a purpose of that Act; or

(b) to a public health authority that is similar to the persons described in clause (a) and that is established under the laws of Canada, another province or a territory of Canada or other jurisdiction, if the disclosure is made for a purpose that is substantially similar to a purpose of the Health Protection and Promotion Act.

PHS receives approximately 2400 reports of reportable diseases annually. In order to balance the protection of individual privacy with the need to protect others who may be at risk, PHIPA and the HPPA have created an interlocking set of obligations that permit case-related information to be shared with other organizations or individuals involved in public health investigation or response, but not with third parties, absent the consent of the named individual.

In the survey of Boards of Health and Medical Officers of Health, several cited this PHIPA-HPPA interaction as the rationale for why issues of specific individual cases or groups of cases of reportable disease are not reported to the Board of Health. Balancing these legal obligations with the Board’s stated desire for communication regarding ‘matters of potential concern’ is an ongoing issue for any public health
organization but one which has been resolved in practice by avoiding such communication between the MOH and Board so as not to run afoul of this legal framework.

Given this practice and the desire of the newly-created Board to bring some clarity to communication between the MOH and Board members, the draft policy categorizes information into orientation, program updates, and specific issue communication.

At the highest level, an orientation to the role of the Board of Health, the provisions of the HPPA, and the work of PHS is proposed. Particular attention to the provisions of the Personal Health Information Protection Act and how it shapes communication will be included.

Program updates which have been provided in recent months will be augmented by standing summary reports on CD investigations and health hazard investigations. Finally, provisions for specific issue communications are outlined in the policy.

**ALTERNATIVES FOR CONSIDERATION:**

In light of Council’s explicit direction, no alternatives are presented for consideration.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

The legal framework has been described in the body of the report.

**POLICIES AFFECTING PROPOSAL:**

**RELEVANT CONSULTATION:**

A survey of other health units and input from Medical Officers of Health was completed involving Middlesex-London, Niagara, Durham, Hastings-Prince Edward, Ottawa, Kingston Frontenac Lennox & Addington (KFLA), Windsor-Essex, Halton and Peel.

**CITY STRATEGIC COMMITMENT:**

Community Well-Being is enhanced. ☒ Yes ☐ No

Effective communication facilitates the protection and promotion of the health of people in Hamilton

Environmental Well-Being is enhanced. ☐ Yes ☒ No

Economic Well-Being is enhanced. ☐ Yes ☒ No
Does the option you are recommending create value across all three bottom lines?
☐ Yes  ☑ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?
☑ Yes  ☐ No

Effective communication and role delineation make for a more effective and supportive workplace.
Draft Communication Policy
for Medical Officer of Health and Board of Health Communication

Preamble

This policy document distinguishes among types of communication: orientation, program updates, and specific issue communications.

Orientation

1. Recognizing the provisions of the HPPA and PHIPA, the MOH, in consultation with other City officials, shall develop and deliver an orientation package for all incoming Board of Health members within two months of the start of their term, and at the start of each new Council term for all members. This shall include explanation of the Board’s role as a health information custodian with respect to personal health information and the penalties for failing to fulfil obligations under PHIPA.

Program Updates

2. At least once per year, the MOH (or staff designated by the MOH) shall provide updates on each of the PHS program areas describing the level of current activities, planned activities, and the degree to which the program provided is in compliance with the applicable standards and guidelines.

3. In addition, in the event that there is to be a significant change in finances, staffing or service levels in PHS-delivered programs, these matters would be the subject of a report to the Board at its next regular meeting.

4. The MOH shall provide updates on communicable disease (CD) investigations and health hazard investigations on a quarterly basis. These reports shall include summaries of numbers of reported cases and investigations. Consistent with PHIPA, these reports shall contain no personal health information. Following the presentation of the report to the Board, the contents shall be considered public information.

5. In the event of a public health emergency whose scope requires external resources, the MOH shall inform the City Manager and/or call the Emergency Control Group to meet. Board members shall be kept informed following existing protocols covering municipal emergencies and the activation of the Emergency Control Group.

6. In the case where a complaint is made to the Board pursuant to Section 11(1) of the HPPA, (Complaint re health hazard related to occupational or environmental health), the quarterly report to the Board shall be delivered in such
a way as to ensure the Board’s compliance with PHIPA in respect of personal health information received as part of said complaint.

Specific Issue Communications: Communicable Disease & Health Hazard Investigations

7. All reportable diseases create obligations for the MOH as a health information custodian (HIC). Recognizing that this role is distinct from the Board’s possible HIC role in the situation of a Section 11(1) complaint directed to the Board, it is understood that personal health information gathered for the purpose of completing an investigation of a reportable disease is not permitted to be shared with the Board without the express, written consent of the individual involved.

8. As part of routine public health practice investigating communicable disease reports and health hazards, the MOH may make a professional judgement that communication to the Board should occur. While not exhaustive, such circumstances would include: where communication may advance an investigation, thus reducing spread or impact of a communicable disease, where there is an identifiable ongoing risk to the community at large, or where public education may be useful over and above the channels outlined with this policy.

9. In the event of a media release or public meeting in the context of an investigation, (such as to advance an investigation or where an identifiable ongoing risk exists) the MOH shall inform the Board at the time of the release or public meeting.

10. Where such communication on a specific issue is to occur, and where the Board is not scheduled to meet before the communication needs to occur, the MOH shall communicate with the Board Chair or in his/her absence, the Chair’s designate. The Chair will notify the members of the Board as the Chair sees it is appropriate.