



Consent and Capacity Board

Preparing for a Board Hearing: Information for Family Members, Partners and Friends

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What is the role of family members, partners and friends at the hearing?

The Board encourages family members, partners and friends to attend the hearing, even if they are not parties to the hearing. You may be asked to give evidence or you may ask the Board for permission to speak. The Board understands that attending the hearing can be a very emotional experience.

Is the hearing open?

The hearing is generally open to anyone who wishes to attend. Infrequently, the Board may order that the hearing be closed in order to protect privacy. If this happens, everyone except for the parties and their lawyers or agents may be excluded from the hearing. Witnesses are allowed to enter a closed hearing only when it is their turn to give evidence.

Even when the hearing is not closed, witnesses may sometimes be asked to wait outside the hearing room until it is their turn to speak. This is done to ensure that witnesses will not be influenced by other evidence. When this process is followed, the witness will be allowed to remain in the hearing room after giving evidence.

Do I need a lawyer at the hearing?

Parties and witnesses are allowed to have a lawyer or agent to represent them. It is up to you to decide if you should have a lawyer or agent. If you are a party to the hearing, your lawyer or agent may ask questions of all witnesses and make submissions. If you are a non-party witness, your lawyer may only be actively involved in the presentation of your evidence.

When and where will the hearing be?

Parties will receive a notice from the Board with the time and place of the hearing. If you are not a party, you may ask the Board for the time and place. The hearing will take place in the facility where the subject of the hearing resides or receives treatment or at some other place convenient to the parties. The hearing will be held within 7 days after the Board receives your application unless all the parties consent to an extension. Facility staff might be asked to arrange for a meeting room to be made available.

What should I do before the hearing?

If you have a lawyer or agent, meet that person as soon as you can. Be sure that you understand what the hearing is about. Think about what you want to accomplish at the hearing and if there are other ways of achieving your goals. Think about what you want to say and consider whether to call any witnesses.

Am I a party?

A person's spouse, partner, parents, children and brothers and sisters are all automatically parties if a hearing is held to consider:

- the appointment of a representative to consent to or refuse treatment, admission to a care facility or personal assistance services [Form B or C].
- a request to amend or terminate the appointment of a representative to consent to or refuse treatment, admission to a care facility or personal assistance services [Form H].

- the appointment of a representative to consent to the collection, use or disclosure of personal health information [Form P3 or P4].

The substitute decision-maker(s) of an incapable person is automatically a party to the hearing if the Board considers:

- a request for directions regarding prior capable wishes [Form D].
- a request for authority to depart from prior capable wishes [Form E].
- a review of a substitute decision maker's compliance with the rules for substitute decision making [Form G].
- a review of a Substitute Decision Maker's compliance with s.24(2) under PHIPA [Form P2]

Only parties are entitled to examine and copy all documents, including those in medical and other records that will be used at the hearing as well as all reports whose contents will be given in evidence even if the report itself is not going to be put before the Board.

There are many other applications before the Board to which family members and SDMs are not automatic parties (i.e. Form A, Form 16, Form 48 etc.). If you are not a party, you may wish to consider whether you want to ask the Board to give you party status. If you decide to do so, you should contact to the Board as soon as possible. The Board will decide if this is appropriate in the circumstances taking into account the Board's Rules of Practice.

What will happen at the hearing?

The Presiding Member will introduce everyone and explain how the hearing will work, who the official parties are and the order in which people will speak. Each party may attend the hearing and invite anyone they want to come. Each party may have a lawyer, call witnesses and bring documents.

Each party as well as the Board members may ask questions of each witness. At the end of the hearing each party will be invited to summarize and the Presiding Member will then end the hearing.

What happens after the hearing?

The Board will meet in private to make its decision. It will issue the decision within one day. Written reasons will be issued if any of the parties request them within thirty days of the hearing.

Can the Board's decision be appealed?

A decision by the Board can be appealed by any party to the Superior Court of Justice.

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