



Consent and Capacity Board

Preparing for a Board Hearing: Information for the Health/Residential Facility Manager or Administrator

Preparing for a Board Hearing: Information for the Health / Residential Facility Manager or Administrator

Responsibilities of the facility manager

You or your designee(s) have a responsibility to assure that the law is followed and to facilitate the process if a hearing involving a resident/patient in the facility is contemplated or scheduled. This might include providing a Notice of Hearing to the parties, reserving an appropriate hearing space, facilitating a parties' access to a patient's or resident's health record. You might designate a specific staff member as the regular liaison to the Board.

How are applications made to the Board?

Individuals may apply on their own or with the assistance of someone else, ie. a member of your staff, a friend, lawyer, rights adviser or a member of an advocacy group. If an application is given to a member of your staff, it must be forwarded by fax to the Board within one hour.

Communications

Communications between the Board and the patient / resident or health practitioners may be conducted through your facility. These communications may not be obstructed or delayed in any way (see s. 26, *Mental Health Act*). Facility staff may be required to provide the Board with written confirmation of prompt delivery of these communications to the addressee.

Lawyers

Patients/residents may have a lawyer who will probably want to meet privately with them, review their chart and speak with facility staff. Often, matters can be resolved without a hearing if the parties make an effort to communicate beforehand.

Patients/residents may contact a lawyer on your own or through the Law Society Referral Service, at The Law Society of Upper Canada. Information can be found online at www.lsuc.on.ca or contact the Referral Service by phone at 1-855-947-5255. If the patients are in a psychiatric facility, a rights adviser will explain their rights to them, help them to apply to the Board and help them find a lawyer. Patients/residents may be entitled to a Legal Aid lawyer free of charge. They may contact the Psychiatric Patient Advocate Office at 1-800-578-2343 or Legal Aid at 1-800-668-8258.

In some cases, the Board can order Legal Aid Ontario to arrange for legal representation for the patient or resident before the hearing is scheduled. If a patient or resident comes to the hearing without a lawyer, the Board may also order that legal representation be arranged for them.

Who may see medical and health records presented at the hearing?

All parties must be allowed to examine and copy any and all documents that will be used at the hearing (see s. 76, *Health Care Consent Act*.) Copies should be provided at nominal cost. Parties must also be allowed to see and copy reports if the contents of the reports will be given in evidence even if the report itself is not going to be shown to the Board. The *Mental Health Act* defines very limited circumstances in which a person may be denied access to his or her records.

What about medical and health records that will not be used at the hearing?

Before the hearing, a person's lawyer or agent is entitled to see and copy (at his or her own expense) all of his or her medical and health records (see s.76, *Health Care Consent Act*). If the person is capable of accessing the record, he or she is also entitled to see and copy these materials. Copies should be provided at nominal cost.

Where and when will the hearing be?

Parties will receive a notice from the Board with the time and place of the hearing. The hearing will typically take place in the facility where the subject of the hearing resides or receives treatment or at some other place convenient to the parties (see Rule 12.1, *CCB Rules of Practice*). 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 arrangements should the facility make to accommodate the hearing?

The facility must provide a suitable space for the hearing. Typically this will be a meeting room or similar space in an area of the facility to which the patient or resident can be provided access. A table which will seat at least 8 – 10 hearing participants is usually required, with some additional seating separate from the table for observers. Easy access to electrical outlets from the table is also required.. It is preferable to have a speaker phone or handsfree capable phone in the room. Ideally, a fax machine should be located in or near the hearing room in the event that documents may need to be transmitted to or from the Board office. The room must have a door for privacy. If possible, a room with two doors and a nearby breakout room is preferred. All hearing rooms must be accessible in accordance with AODA requirements. The hearing room must be available at least 30 minutes prior to the hearing time to allow for set up and may be required for the balance of the day. If possible, a nearby quiet place with seating should be designated as a waiting area. Participants would also be appreciative of the provision of water and tissue, if possible.

It is incumbent upon health professionals and facilities to advise the Board of any special arrangements which may be required for the hearing. These arrangements may include, but are not limited to, accessibility or accommodation issues, interpretation requirements and security concerns.

If facilities cannot be provided as outlined above, or if the patient/resident is physically incapable of coming to the hearing room, contact the Board to discuss alternative arrangements.

Who should attend the hearing?

The patient / resident is entitled but not required to attend. Depending on the type of hearing, the health practitioner or service provider is expected to attend. The hearing is open to the public so anyone may attend to observe.

Clothing and restraints

Patients are entitled to attend in street clothes except in unusual circumstances. Restraints are not permitted unless justified to the Board for safety reasons.

Should the doctor provide a clinical summary?

The Board encourages physicians to prepare copies of clinical summaries before the hearing begins. These help physicians focus on relevant points and result in more efficient presentations and shorter hearings. The Board has created summary forms on the most common types of applications. These documents may be found on our website at ccboard.on.ca under Resources.

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 members will remain in the hearing room to deliberate in private. It will issue the decision within one day. Written reasons will be issued within four business days if any of the parties request them within thirty days of the hearing (see s. 75.(4), *Health Care Consent Act*).

Can the Board's decision be appealed?

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

Contact Us

CCB Numbers

Greater Toronto Area

Phone: (416) 327-4142

TTY/TDD: (416) 326-7TTY or (416) 326-7889

Fax: (416) 327-4207

Outside Greater Toronto Area

Phone: 1-866-777-7391

TTY/TDD: 1-877-301-0TTY or 1-877-301-0889 (Toll Free)

Fax: 1-866-777-7273 (Toll Free)