



Consent and Capacity Board

Overview

Introduction to the Board

The Consent and Capacity Board is an independent body created by the provincial government of Ontario under the Health Care Consent Act. It conducts hearings under the Mental Health Act, the Health Care Consent Act, the Personal Health Information Protection Act and the Substitute Decisions Act. Board members are psychiatrists, lawyers and members of the general public appointed by the Lieutenant Governor in Council. The Board sits with one, three, or five members. Hearings are usually recorded in case a transcript is required.

The Board has the authority to hold hearings to deal with the following matters:

Health Care Consent Act

- Review of capacity to consent to treatment, admission to a care facility or personal assistance service.
- Consideration of the appointment of a representative to make decisions for an incapable person with respect to treatment, admission to a care facility or a personal assistance service.
- Consideration of a request to amend or terminate the appointment of a representative.
- Review of a decision to admit an incapable person to a hospital, psychiatric facility, nursing home or home for the aged for the purpose of treatment.
- Consideration of a request from a substitute decision maker for directions regarding wishes.
- Consideration of a request from a substitute decision maker for authority to depart from prior capable wishes.
- Review of a substitute decision maker's compliance with the rules for substitute decision making.

Mental Health Act

- Review of involuntary status (civil committal).
- Review of a Community Treatment Order.
- Review as to whether a young person (aged 12 to 15) requires observation, care and treatment in a psychiatric facility.
- Review of a finding of incapacity to manage property.

Personal Health Information Protection Act

- Review of a finding of incapacity to consent to the collection, use or disclosure of personal health information.
- Consideration of the appointment of a representative for a person incapable of consenting to the collection, use or disclosure of personal health information.
- Review of a substitute decision maker's compliance with the rules for substitute decision making.

Substitute Decisions Act

- Review of statutory guardianship for property.

How are applications made to the Board?

Application forms may be available from health or residential facilities. Completed applications should be faxed to the Board. Health practitioners and officials of health and residential facilities are expected to fax forms to the Board within one hour of completion. If necessary, call the Board to have the application forms and specific information sheets faxed.

When and where will the hearing be?

The 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 usually take place within a week after the Board receives the application and will be held in the facility where the subject of the hearing resides or receives treatment or at some other place convenient to the parties.

How much does it cost?

There is no charge to the participants for the services of the Board. The Board is publicly funded and requests that all participants assist in keeping costs down.

What will happen at the hearing?

Each party may attend the hearing and invite anyone they want to come. Family members and friends are also encouraged to attend. 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 have a lawyer, call witnesses and bring documents. Each party and 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. The Board will issue its decision within one day. The Board may also issue written reasons explaining its decision. Written reasons will be issued if any of the parties request them. This request may be made within thirty days of the hearing.

Can the Board's decision be appealed?

Any of the parties may appeal the Board's decision to the Superior Court of Justice.

How can I get more information?

Information sheets, application forms and any further information can be obtained by contacting the Board or on our web site at www.ccboard.on.ca.

Preparing for a Board Hearing: Information for the Incapable Person or Patient

Do I need a lawyer at the hearing?

It may be a good idea to have a lawyer represent you but you do not have to have one. You may contact a lawyer on your own or through the Lawyer Referral Service. Their number is listed in the White Pages under The Law Society of Upper Canada and in the Yellow Pages under Lawyer Referral Services. If you are in a psychiatric facility, you may also ask to speak with a rights adviser. The rights adviser can explain your rights, help you to apply to the Board and help you find a lawyer. You may be entitled to a Legal Aid lawyer free of charge.

In some cases, the Board can order that legal representation be arranged for you before the hearing is scheduled. If you come to the hearing without a lawyer, the Board may order that legal representation be arranged for you.

When and where will the hearing be?

You will receive a notice from the Board with the time and place of the hearing. The hearing will take place in the facility where you reside or receive treatment, or at some other place close to where you are. The hearing is usually held within one week after the Board receives an application.

What should I do before the hearing?

If you have a lawyer or someone else representing you, meet with 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, what evidence you want to present and consider whether to call any witnesses.

Am I entitled to see the documents that will be used at the hearing?

Yes. You and your lawyer or agent must be allowed to examine and copy any and all documents that will be used at the hearing.

You must also be allowed to see and copy reports if their contents 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, your lawyer or agent is normally entitled to see and copy (at your expense) all of your medical and health records. If you are capable of accessing the record, you are also entitled to see and copy (at your expense) these materials.

There are special procedures under the Mental Health Act, the Child and Family Services Act and the Long-Term Care Act that a doctor may use to limit access to some medical records. It is against the law to deny access unless these procedures have been followed.

What will happen at the hearing?

Each party may attend the hearing and invite anyone they want to come. 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 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 its case and the Presiding Member will then end the hearing.

What happens after the hearing?

The Board members will meet in private to make their decision. The Board will issue its decision within one day. The Board may also issue written reasons explaining its decision. Written reasons will be issued if any of the parties request them. This request must be made within thirty days of the hearing.

Can I appeal the Board's decision?

You or any of the other parties may appeal the Board's decision to the Superior Court of Justice.

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. 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 impeded in any way. 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 their own or through the Lawyer Referral Service. Their number is listed in the White Pages under The Law Society of Upper Canada and in the Yellow Pages under Lawyer Referral Services. 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.

In some cases, the Board may order that legal representation be arranged for patients /residents before the hearing is scheduled. If the patient/resident comes to the hearing without a lawyer, the Board may order that legal representation be arranged for the patient/resident.

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. 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 normally entitled to see and copy (at his or her own expense) all of his or her medical and health records. 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.

There are special procedures under the Mental Health Act, the Child and Family Services Act and the Long-Term Care Act that a doctor may use to limit access to some medical records. It is against the law to deny access unless these procedures have been followed.

Where & when will the hearing be?

Hearings are generally held within one week of application and usually take place at the facility. Facility staff might be asked to arrange for a meeting room to be made available.

What facilities are required?

A meeting room with 110 Volt power, a table of normal work height, seating and space for at least ten people, glasses and a pitcher of water are required. The room must have a door for privacy and be accessible to the patient/resident. It must be available at least 20 minutes prior to the hearing time to allow for set up and may be required for the balance of the day. If practical, a nearby place with seating should be designated as a waiting area.

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. Family, friends and staff are also encouraged to attend.

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.

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. The parties will each have a chance to speak, present documents and call witnesses and question other witnesses.

At the end of the hearing, each party will be invited to summarize its case 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. Its decision will be forwarded to the parties within one day of the end of the hearing. The Board may provide written reasons explaining its decision. Written reasons will be issued if any of the parties request them within thirty days of the hearing.

Board decisions may be appealed to the Superior Court of Justice.

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

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 & where will the hearing be?

The 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 usually take place within a week after the Board receives the application and will be held in the facility where the person who is the subject of the hearing resides or receives treatment or at some other place convenient to the parties.

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.

- 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.
- the appointment of a representative to consent to the collection, use or disclosure of personal health information.

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

- a request from a substitute decision maker for directions regarding wishes.
- a request from a substitute decision maker for authority to depart from prior capable wishes.
- a review of a substitute decision maker's compliance with the rules for substitute decision making.

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.

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. The parties will each have a chance to present views, present documents and call other witnesses. Only parties will be invited to summarize and the Presiding Member will then end the hearing.

What happens after the hearing?

The Board members will meet in private to make its decision and will issue the decision to the parties within one day. The Board may also issue written reasons explaining its decision. Written reasons will be issued if any of the parties request them. This request must be made within thirty days of the hearing.

Can I appeal the Board's decision?

Only parties may appeal the Board's decision. Appeals are made to the Superior Court of Justice.

Contact Us

If you would like to contact the Board or fax an application, please use any of the numbers below:

CCB Numbers
Greater Toronto Area Phone: (416) 924-4961 Fax: (416) 924-8873
Outside Greater Toronto Area Phone: 1-866-777-7391 (Toll Free) Fax: 1-866-777-7273 (Toll Free)

