



CONSENT AND CAPACITY BOARD

RULES OF PRACTICE

JUNE 19, 2019

CCB RULES OF PRACTICE
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PREAMBLE

These Rules have been adopted by the Consent and Capacity Board (the "Board") pursuant to section 25.1 of the *Statutory Powers Procedure Act*. Except where their application is statutorily excluded, these Rules apply to all hearings held by the Board including those held under the *Health Care Consent Act, 1996*, *Long-Term Care Homes Act, 2007*, *Mental Health Act*, *Mandatory Blood Testing Act, 2006*, *Personal Health Information Protection Act, 2004*, and *Substitute Decisions Act, 1992*, and any other legislation pursuant to which the Board is required to hold hearings.

1. PURPOSE OF THE RULES

1.1 The purpose of these Rules is to provide a just, fair, accessible and understandable process for parties to hearings before the Board. The Rules attempt to facilitate access to the Board; to promote respectful hearings; to promote consistency of process; to make hearings less adversarial, where appropriate; to make hearings as cost effective as possible for all those involved in Board hearings by ensuring their efficiency and timeliness; to avoid unnecessary length and delay of hearings; to assist the Board in fulfilling its statutory mandate; and in delivering a just and fair determination of the matters which come before it.

1.2 These Rules are to be read in conjunction with the *Statutory Powers Procedure Act*. The Board will also consider the Board's Policy Guidelines and other Board policies, practice directions or procedural directions.

2. APPLICATION OF RULES

2.1 These Rules apply to all hearings of the Board.

2.2 Where any of these Rules conflict with any statute or regulation or where the application of these Rules is statutorily excluded, the provisions of the statute or regulation will prevail.

2.3 Where something is not provided for in these Rules, the practice may be decided by referring to a similar provision in these Rules.

2.4 In applying these Rules, the Board will make orders and give directions that are proportionate to the complexity of the issues and the interests at stake.

3. DEFINITIONS

"business day" means any day other than a Saturday, Sunday or a holiday.

"case conference" has the same meaning as "pre-hearing conference" in the *Statutory Powers Procedure Act (SPPA)*.

“Chair” means a member of the Board designated by the Lieutenant Governor in Council as chair, and is the chief executive officer of the Board.

“document” includes a paper, book, record, sound recording, video, photograph, chart, graph, and information recorded or stored by means of any device.

“electronic hearing” means a hearing by teleconference, videoconference or any other form of electronic communication.

"filing" means the delivery of any document to the Board’s Deputy Registrar and its confirmed receipt by the Board.

“hearing” includes a case conference, a motion, or a hearing of the application on the merits in which a party has the opportunity to participate in writing, in-person, or electronically.

“holiday” means any Saturday, Sunday, statutory holiday or other holiday observed by government.

“member” means a person appointed to the Board by Order in Council made by the Lieutenant Governor in Council.

"motion" means a request for the Board’s ruling or decision on a particular issue at any stage within a hearing.

“panel” means the member or, collectively, the members assigned to a hearing.

“service” means the delivery of a document to a person or to a person’s lawyer in accordance with these Rules.

4. BOARD POWERS

4.1 The Board may exercise any of its powers under these Rules on its own initiative or at the request of any party.

4.2 During any hearing, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it. The Board may decide the procedure to be followed for any hearing and may make procedural directions or orders at any time. The Board may impose such conditions as are appropriate and fair.

4.3 In order to ensure the expeditious, fair and just determination of the hearings before it, the Board may waive, vary or dispense with the application of any Rule or procedure, on its own initiative or on the request of a party, except where to do so is prohibited by legislation or a specific rule.

4.4 In order to provide for the fair, just and expeditious determination of any matter before it, and subject to all applicable statutory requirements and procedural fairness, the Board may take steps to manage its process, including,

- (a) lengthen or shorten any time limit in these Rules;
- (b) allow any filing to be amended;
- (c) consolidate or hear applications together;
- (d) direct that applications be heard separately;
- (e) direct that notice of a hearing be given to any person or organization;
- (f) determine and direct the order in which issues in a hearing, including issues considered by a party or the parties to be preliminary, will be considered and determined;
- (g) define and narrow the issues in order to decide an Application;
- (h) make or cause to be made an examination of records or other inquiries, as it considers necessary;
- (i) determine and direct the order in which evidence will be presented;
- (j) permit a party to give a narrative before questioning commences;
- (k) question a witness;
- (l) limit the evidence or submissions on any issue;
- (m) advise when additional evidence or witnesses may assist the Board; and
- (n) make such further orders as are necessary to give effect to an order or direction under these Rules.

5. COMPUTING TIMES

5.1 In computing time periods under these Rules or in an order or decision, except as provided by statute or where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, they will be counted by excluding the day on which the first event happens and including the day on which the second event happens;
- (b) where the time for doing an act under these Rules expires on a non-business day, the act may be done on the next day that is a business day;
- (c) where, under these Rules, a document would be deemed to be received or service would be deemed to be effective on a day that is a non-business day, it will be deemed to be received or effective on the next day which is a business day; and
- (d) if a document is received after 4 p.m. on a business day, it will be deemed to have been received on the next business day.

6. PARTIES

6.1 The following persons are parties to an application for the purpose of these Rules:

- (a) persons specified as parties by the statute under which the application arises; and

(b) any other person the Board specifies.

6.2 In deciding whether to specify a person as a party to an application, the Board may consider

- (a) the nature of the case;
- (b) the issues;
- (c) whether the person has a genuine interest in the issues;
- (d) whether the person's interests may be directly and substantially affected by the hearing or its result;
- (e) whether the person is likely to make a useful and distinct contribution to the Board's understanding of the issues in the hearing;
- (f) efficiency and timeliness; and
- (g) any other relevant factor.

6.3 The Board may require persons who have similar interests to designate one person to act as their spokesperson, or to co-ordinate their submissions.

6.4 If it appears to the Board, prior to the commencement of or at any time during the hearing, that the subject of the application will not have legal representation at the hearing, the Board may exercise its powers under section 81 of the *Health Care Consent Act, 1996* to direct Legal Aid Ontario to arrange for legal representation to be provided for the person.

6.5 In order to exercise its powers under section 81 of the *Health Care Consent Act, 1996*, the Board or its administrative staff may make inquiries for the sole purpose of determining whether the subject of the application is or may be incapable and wishes to be represented by legal counsel at the hearing.

6.6 Given the significant liberty, autonomy and dignity interests at stake in Board matters, and taking into account the vulnerable parties that may be involved in a Board hearing, law students, students-at-law and articling students may not appear on behalf of a party in Board hearings, other than for minor administrative appearances such as rescheduling a hearing.

7. INTERVENORS

7.1 In exceptional circumstances, the Board may allow a person to intervene in any application on such terms as the Board may determine. The Board will determine the extent to which an intervenor will be permitted to participate in a proceeding.

7.2 A request to intervene by a person must be made in writing and must be delivered to all parties and filed with the Board.

8. AMICUS CURIAE

8.1 The Board may appoint a legal representative to participate in the hearing, or part of the hearing as *amicus curiae*, or friend of the Board, to assist the Board. The Board may define the role of *amicus curiae* on a case by case basis. *Amicus curiae* is not a party to the proceeding.

9. FILING APPLICATIONS AND OTHER DOCUMENTS WITH THE BOARD

9.1 An application, notice or any other document must be filed with the Board, unless otherwise directed by the Board and subject to Rule 30.

9.2 Subject to Rule 5, documents are deemed to be filed as of the date and time they are received by the Board.

9.3 A document may be filed by

- (a) hand delivery;
- (b) courier service;
- (c) regular or registered mail;
- (d) facsimile;
- (e) electronic mail at the Board's main email address; or
- (f) any other means directed by the Board.

10. SERVICE OF DOCUMENTS

10.1 Service may be effected by

- (a) personal delivery of a document to a person or to the person's lawyer;
- (b) faxing the document to the last known fax number of the person or to the person's lawyer in the hearing;
- (c) delivery of the document by regular mail, courier, Priority Post or Registered Mail, to the last known address of the person or to the person's lawyer in the hearing;
- (d) delivery of the document by electronic mail to a person or the person's lawyer in the hearing;
- (e) any other means authorized or permitted by the Board for delivery of the document or for communicating the information contained in the document.

10.2 If the Board is aware that the subject of an application is a young person under the age of 16, a document will be served on the young person or the young person's lawyer in the hearing, if any. If the young person does not have a lawyer, a document may be served on both the young person and the Children's Lawyer.

10.3 Service is deemed to be effective, when delivered by

- (a) personal delivery, before 4 p.m. on the day of delivery, and after that time, on the next day;

- (b) regular mail, the fifth day after the document was mailed;
- (c) fax, before 4 p.m. on the date it was sent, and after that time, on the next day;
- (d) courier, on the day after the courier picks it up for delivery;
- (e) electronic mail, before 4 p.m. on the day it was sent, and after that time, on the next day; or
- (f) any means authorized or permitted by the Board, on the date specified by the Board in its direction.

10.4 Service upon a person's lawyer is effective service upon the party the lawyer represents unless the Board has ordered otherwise.

10.5 After an application is filed with the Board, a party may waive service by the Board or by any other party, of a notice of hearing or any other document.

10.6 Parties serving documents will include their name, address, electronic mail and telephone and fax numbers, as applicable.

11. INCOMPLETE OR TECHNICALLY DEFECTIVE APPLICATIONS

11.1 Upon receiving an application that appears incomplete, the Board will contact the person submitting the application to obtain the missing information. If information required to establish the nature of the application, the parties or other facts material to the ability to hold a hearing cannot be obtained following reasonable inquiry, the Board may decide not to process the application.

11.2 Upon receiving an application that appears to be materially defective, the Board will notify the person submitting the application of the defect. If the defect is not promptly remedied, the Board may decide not to process the application.

11.3 The Board will give the applicant, and such other persons as the Board deems appropriate, notice of its decision not to process the application and will set out the reasons for the decision and the requirements for commencement of processing of the application.

11.4 The application will be deemed to have been received by the Board if and when these requirements have been met to the satisfaction of the Board.

12. DISMISSAL OF APPLICATION WITHOUT HEARING

12.1 The Board may dismiss an application without a hearing if

- (a) the application is frivolous, vexatious or is commenced in bad faith;
- (b) the application relates to matters that are outside of the jurisdiction of the Board; or
- (c) the statutory requirements for bringing the application have not been met.

12.2 Before dismissing an application under this section, the Board will give notice of its intention to dismiss the application to

- (a) all parties to the application, if the application is being dismissed for reasons referred to in Rule 12.1 (b) or
- (b) the party who commenced the application, if the application is being dismissed for any other reason.

12.3 The notice of intention to dismiss an application will set out the reasons for the intended dismissal and inform the parties of their right to make written submissions to the Board with respect to the dismissal within five days of service of the notice.

12.4 Notwithstanding Rule 12.3 above, the Board may determine the process in respect of any notice of intention to dismiss and any related submissions, at its sole discretion.

13. NOTICE OF WITHDRAWAL OF APPLICATION

13.1 An applicant who does not want to continue with all or part of an application may withdraw all or part of the application by filing a written notice of withdrawal to the Board. Where the applicant is represented by legal counsel, the written notice of withdrawal must be filed by legal counsel. The notice of withdrawal does not need to be in any particular format, but must be in writing.

13.2 A party to a hearing before the Board who, before the time of the hearing, takes an action that may make the hearing unnecessary will

- (a) notify the Board about such action immediately by filing with the Board, and sending to the other parties, the document (if any) that may render the hearing unnecessary, or
- (b) provide notice to the Board and to the other parties in writing, explaining the circumstances that may render the hearing unnecessary.

13.3 A hearing cannot be cancelled until the Board receives a written notice of withdrawal or until the Board is reasonably satisfied that appropriate documentation has been completed. If, for any reason, the Board is not satisfied that an application has been properly withdrawn or that a hearing has become unnecessary, the Board may proceed with the hearing.

14. SETTING DATES IN A HEARING

14.1 The Board may schedule hearing dates and times, with or without consultation with the parties, as the Board considers appropriate, and in accordance with the Board's empowering legislation.

14.2 For the purpose of these Rules, a hearing commences with a case conference, a motion, or a hearing of the application on the merits.

15. NOTICE OF HEARING

15.1 Notice of a hearing will be provided by the Board to the parties and other persons as permitted by statute.

15.2 In addition to providing the information required by statute, the Board may include in a notice of hearing any other information or directions it considers necessary for the proper conduct of the hearing.

15.3 The Board may serve notice of a hearing verbally, only if the Board considers this form of notice appropriate and necessary in the circumstances.

15.4 If, at the commencement of a hearing, the Board is not satisfied that all parties have received notice of the hearing, the Board may adjourn the hearing to ensure efforts have been made to provide notice to all parties.

15.5 If satisfied that efforts have been made to locate the parties and to give notice to those parties whose contact information has been provided, the Board may make an Order dispensing with service.

16. PLACE OF HEARING

16.1 Where the subject of the application is an inpatient in a hospital or psychiatric facility, or a resident of a long-term care home or confined in a care facility,

- (a) the Board hearing will be held at the hospital, psychiatric facility, long-term care home or care facility, as applicable, or
- (b) where it is not possible to hold the hearing at the place set out in Subrule 16.1(a), the Board has sole discretion to decide on an alternative location, having regard to the factors set out in Subrule 16.3 (a-i).

16.2 Where the subject of the application is living in the community and is subject to treatment, and the hearing relates to matters involving treatment, the hearing will ordinarily be held at the health facility from which the person receives treatment.

16.3 Where the subject of the application is living in the community and the hearing relates to matters not involving treatment, the Board will decide where the hearing will be held having regard to

- (a) the location of the person who is the subject of the application;
- (b) the convenience of the parties;

- (c) the availability of a suitable hearing room;
- (d) the cost, efficiency and timeliness of the hearing;
- (e) the avoidance of delay;
- (f) the fairness of the process;
- (g) public accessibility to the hearing;
- (h) the fulfilment of the Board's statutory mandate; and
- (i) any other matter relevant in order to secure the just and expeditious determination of the subject matter of the hearing.

17. COMMUNICATION WITH THE BOARD

17.1 All communication with a hearing panel, other than during an appearance, must be sent through the Board office, and may be sent electronically.

17.2 All parties must be copied on written communication sent to the Board Office about the substance of the hearing. If this rule is not followed, the Board may not accept or process the communication.

17.3 All written and oral communications with the Board must be relevant to the hearing and respectful to all participants in the hearing and to the Board.

17.4 Emails to the Board must be original emails that are specific and require the attention of the Board, and must not include lengthy communications among the parties.

18. MOTIONS

18.1 A motion may be made by a party to the hearing or by a person with an interest in the hearing.

18.2 Where a person who has an interest in the hearing brings a motion, the Board may deal with the motion as if that person were a party for the purposes of the motion only.

18.3 At the earliest possible date before the scheduled hearing date, and in any event no later than 10:00 a.m. on the day before the scheduled hearing date, the party or person who wishes to bring a motion will give written notice of the motion to all other parties and to the Board. If necessary, leave to bring a motion may be sought at the commencement of the hearing.

18.4 Except as otherwise permitted by the Board, all motions will be heard at the commencement of the hearing.

18.5 Notice of a motion does not need to be in any particular form but it must be sent to the Board by regular mail, by Registered Mail, by courier, by facsimile or to the Board's main email address with the subject line: "Notice of Motion" and the file number, if known. Notice of a motion must set out the grounds for the motion and the relief requested.

18.6 The Board may decide in its sole discretion to hear a motion or preliminary issue in person, in writing or electronically.

18.7 The Board may direct the procedure to be followed for the hearing of a motion and may set applicable time limits.

19. CASE CONFERENCES

19.1 The Board may, at the request of a party or on its own initiative, direct the parties to appear before a member of the Board for a case conference for the purpose of considering any or all of the following:

- (a) the identification, simplification and/or resolution of some or all of the issues;
- (b) the settlement of any or all of the issues;
- (c) the identification of facts or evidence that may be agreed upon by the parties;
- (d) the identification of all parties to the hearing;
- (e) the dates by which any steps in the hearing are to be taken or begun;
- (f) the estimated duration of the hearing;
- (g) the identification of witnesses;
- (h) any other matter that may assist in the just and most expeditious disposition of the hearing.

19.2 The Board may direct the parties to serve documents or submissions prior to the case conference.

19.3 The Board will send to all parties a notice of the date and time of the case conference unless a panel orders the parties to attend a case conference on a specified date and time.

19.4 A court reporter may be ordered for a case conference at the discretion of the Board.

19.5 A case conference will be conducted by a Board member.

19.6 A case conference may be held in person, in writing or electronically. A case conference will not be open to the public.

19.7 All documents intended to be used at the hearing that may be of assistance in achieving the purposes of a case conference will be made available to the member presiding at the case conference.

19.8 At the conclusion of the case conference, the presiding member may make any order considered necessary or advisable with respect to the conduct of the hearing, including an order adding parties, and the order binds the parties unless the member presiding at the hearing orders

otherwise. A copy of the order will be placed in the hearing record and made accessible to the hearing panel.

19.9 The member who presides over a case conference may preside over the hearing of the application on the merits, unless the parties attempted to settle the issues during the case conference, in which case the member may only participate with the consent of all parties.

20. MEDIATION

20.1 Mediation, which is a procedural step not forming a part of the hearing, may be held for the purpose of attempting to reach a settlement of any or all of the issues, or at least their simplification.

20.2 The Board may arrange for mediation only after an application has been filed with the Board and if all the parties consent to participate in the process. Any party can, at any time during the mediation, request an end to the mediation process. If such a request is made, mediation ends and a hearing will take place, if appropriate.

20.3 Mediation will be conducted by a member designated by the Chair to sit as a mediator.

20.4 If a member of the Board presides over a mediation, that member will not participate in the case conference or hearing unless all parties consent.

20.5 Mediation will not be open to the public.

20.6 After mediation, all documents will be returned to the party who provided them. Documents created or statements made for the sole purpose of mediation are not part of the record and are not admissible in a hearing unless all parties consent. Discussions held at mediation are privileged and confidential and may not be disclosed in further hearings.

20.7 If all parties to mediation wish to resolve all or some of the issues in dispute by way of an order of the Board, a request in writing will be made by the parties to the Board. The request will record the agreements and undertakings made during mediation. The Board may issue such an order, as appropriate and at its discretion.

21. WRITTEN AND ELECTRONIC HEARINGS

21.1 In appropriate cases and where permitted by law, the Board may decide in its sole discretion to conduct all or any part of the hearings in person or by way of written hearing, teleconference, videoconference or any other form of electronic communication.

21.2 In deciding whether to hold a written or electronic hearing, the Board may consider any relevant factors, including but not limited to

- (a) the suitability of a written or electronic hearing format considering the subject matter of the hearing;
- (b) whether the nature of the evidence is appropriate for a written or electronic hearing, including whether credibility is in issue and the extent to which facts are in dispute;
- (c) the extent to which the matters in dispute are questions of law;
- (d) avoidance of unnecessary length or delay of the hearing;
- (e) the convenience of the parties;
- (f) the ability of the parties to participate in a written or electronic hearing;
- (g) the cost, efficiency and timeliness of hearings; and
- (h) whether the hearing deals with procedural or substantive matters.

21.3 If possible, a party who objects to a written or electronic hearing will file a written objection with the Board before the hearing. An objection to an electronic hearing will set out how an electronic hearing would cause that party significant prejudice. An objection to a written hearing will set out the reasons why a written hearing is not appropriate.

21.4 Where the purpose of the hearing is to deal with procedural matters or a case conference, the electronic hearing will proceed by way of telephone conference call, unless the Board orders otherwise.

21.5 Where the electronic hearing is proceeding by teleconference, the Board will notify the parties and their legal counsel, where applicable, of the conference call instructions in advance.

21.6 Unless otherwise provided in these Rules, every person participating in the electronic hearing will deliver to the Board and to the other parties every document that the person intends to rely upon as an exhibit by 10:00 a.m. on the business day prior to the hearing.

22. HEARINGS IN ENGLISH AND FRENCH

22.1 Subject to the provisions of the *French Language Services Act*, the Board may conduct its hearings in English or French, or partly in English and partly in French.

22.2 Parties are required to notify the Board if they or their witnesses wish to receive any or all services in the French language. This notification will occur at the time the application is made or at the earliest possible opportunity thereafter.

23. INTERPRETERS

23.1 If a party or a party's witness requires an interpreter in a language other than the language of the hearing, the party will notify the Board. This notification will occur at the time the application is made or at the earliest possible opportunity thereafter. The Board, at its expense, will arrange for an interpreter as it deems necessary for the proper conduct of the hearing.

23.2 If a health practitioner, legal counsel, helping professional or rights adviser is of the opinion that a party or a party's witness requires an interpreter at the hearing, that person will notify the Board office at the earliest opportunity.

23.3 Where a written submission or written evidence is provided in a language other than the language of the hearing, the Board may order any person presenting the submission or evidence to provide it in the language of the hearing if the Board considers it necessary for the fair disposition of the matter.

24. ACCOMMODATION

24.1 All participants in a hearing are entitled to accommodation of their needs under the *Human Rights Code*, RSO 1990, cH.19 (the "*Code*"), to the point of undue hardship. A participant in a hearing must notify the Board as soon as possible of any accommodation requests, ideally at the time the application is made.

24.2 If a health practitioner, legal counsel, helping professional or rights adviser is of the opinion that a participant in a hearing has *Code* related accommodation needs that should be met during the hearing process, that person will notify the Board office at the earliest possible opportunity.

25. PROCEDURE AT A HEARING

25.1 The Board controls its own process and will determine its own practices and procedures during the hearing according to the legislation, principles of common law and its Rules.

25.2 Unless directed otherwise by the Chair, only lawyer members of the Board who are also lawyer licensees of the Law Society of Ontario will preside over hearings.

25.3 Only documentary evidence entered as an exhibit during a hearing may be considered by the panel in determining a matter. Parties may not provide additional documents or evidence outside of the hearing process, except upon the request or Order of the Board.

25.4 Parties may not communicate privately with the panel assigned to the hearing before, during or after the hearing.

25.5 Hearings before the Board are generally anticipated to conclude within two hours of the start time of the hearing. If a hearing is not completed within the scheduled time, the hearing panel may adjourn the hearing in order to attend other hearings.

25.6 If a party anticipates that more than two hours will be required to complete a scheduled hearing, the Board must be notified in writing, no later than noon, two days before the scheduled hearing, and the party must set out the reason additional time will be needed and the total amount of time required to complete the hearing.

25.6 Hearing days are anticipated to be from 9:00 a.m. to 5:00 p.m., Monday to Friday.

26. PUBLIC ACCESS TO HEARINGS

26.1 All Board hearings of applications on the merits will be open to the public except where, in accordance with the criteria provided in section 9(1) of the *Statutory Powers Procedure Act*, the Board is of the opinion that a matter should be heard in the absence of the public. At any time after the commencement of the hearing, the Board may close the hearing on its own initiative or at the request of a party.

27. NON ATTENDANCE AT A HEARING

27.1 Where a party has been notified of a hearing and fails to attend, the Board may

- (a) proceed in the party's absence;
- (b) determine that the party is not entitled to further notice of the hearings;
- (c) determine that the party is not entitled to present evidence or make submissions to the Board;
- (d) decide the application based solely on the materials before it;
- (e) deem the application withdrawn on a with or without prejudice basis;
- (f) take any other action it considers appropriate.

28. ADJOURNMENTS

28.1 Once commenced, a hearing may be adjourned at the discretion of the Board. The Board may adjourn the hearing on its own initiative or at the request of a party. In granting an adjournment, the Board may impose such conditions as it considers appropriate.

28.2 The Board may reschedule a hearing on the consent of the parties.

29. EVIDENCE

29.1 At a hearing, the Board may admit any evidence relevant to the subject matter of the hearing. The Board may receive any facts agreed upon by the parties without proof or evidence. The Board may direct the form and order in which evidence will be received.

29.2 Where a proposed exhibit is not a document and it is not reasonably practicable to produce a documentary likeness of that exhibit, such as a photograph, every party and the Board will have a right of reasonable access to the exhibit prior to final submissions. The party who seeks to adduce this type of exhibit must produce it in an accessible format so that the parties and hearing panel can view and/or hear it. The party must provide a copy of the proposed exhibit to the hearing panel in a format that enables it to be entered as an exhibit. The party must also make the necessary arrangements for any equipment required to view or hear the exhibit.

30. DISCLOSURE AND FILING DOCUMENTS AT A HEARING

30.1 The Board may at any stage in a hearing, including prior to a case conference, order any party to provide such further particulars or disclosure as the Board considers necessary for a full and fair determination of the issues in the hearing.

30.2 Subject to Rule 21.6 (written and electronic hearings), a party to a hearing will provide to the Board and to the other parties the documents upon which they intend to rely no later than fifteen minutes before the hearing, or at any other time ordered by the Board or agreed to by the parties.

30.3 The documents tendered for a hearing should be proportionate to the complexity of the issues and the length of the hearing.

30.4 Unless the hearing is proceeding electronically, and subject to a prior order of the Board, any person tendering a document as evidence in a hearing will provide one hard copy for each member of the Board at the hearing and one hard copy for each party, even if the documents were delivered to the Board and/or the other parties in advance of the hearing. The Board may review these documents prior to the commencement of the hearing or prior to any document being marked as an exhibit. Filing such documents does not preclude another party from objecting to the document being admitted at a hearing. Any objections to those documents will be raised at the commencement of the hearing or, if the document is submitted during the hearing, at the time the document is submitted.

31. OATH OR AFFIRMATION

31.1 The Board may require that evidence be given under oath or affirmation.

32. WITNESSES

32.1 The Board may issue a summons to a party or any other person or witness, on its own initiative or upon the request of a party, to give evidence and produce documents relevant to the hearing. A party will inform the Board as soon as possible concerning the need to summon a witness and provide the basis for the request. The requesting party is responsible for providing the Board with all the information necessary to prepare the summons. The party who requires the summons is responsible for serving the summons.

32.2 The Board, at its discretion, may submit the summons request to the presiding member at a case conference or to a hearing panel for consideration.

33. RECORDING OF HEARINGS

33.1 The Board will arrange for the recording of the hearing by a court reporter.

33.2 Subject to Rule 33.1, recording devices of any sort are not permitted at a hearing. Provided the Board is notified of the request in advance of the hearing, the Board, in its discretion, may allow

- a. credentialed, professional journalists acting in the course of their duties to unobtrusively make an audio recording at a hearing for the sole purpose of supplementing or replacing that person's notes; and/or
- b. persons requiring an assistive device, who may use that device to enable them to participate in a hearing.

No other use will be made of these recordings.

33.3 The Board may require that any journalist, permitted by Subrule 33.2(a) to make an audio recording at a hearing, give an undertaking in a form satisfactory to the Board that the recording will not be used for broadcast or any other purpose other than that permitted by Rule 33.2.

33.4 Except as provided in Rules 33.1 and 33.2, the panel of the Board conducting a hearing will not permit any other audio or visual recording of a hearing.

33.5 Parties may order transcripts directly from the court reporter at their own cost.

34. SUBMISSIONS

34.1 After all of the parties have had an opportunity to present evidence, the Board will give all parties an opportunity to make final submissions in support of the decision or order they want the Board to make. No new evidence may be presented during final submissions. The Board may direct the timing and form of final submissions.

34.2 The Board may order the parties to file written submissions on any issue and will direct the order and timing of the exchange and filing of written submissions.

35. DECISIONS, ORDERS AND REASONS FOR DECISIONS

35.1 In addition to regular letter mail, electronic mail, or fax, the Board may serve or deliver a decision, order (order adjourning a hearing or order/endorsement) and/or reasons for decision by any method it deems appropriate in the circumstances, including but not limited to personal delivery.

36. AMENDING A DECISION

36.1 The Board may at any time correct a typographical error, technical error, error of calculation, clerical error, or other similar error made in its decision or reasons.

36.2 On its own initiative or at the request of a party, the Board may, if it considers it advisable, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order.

36.3 Any party making a request under Rule 36.2 will do so in writing within five days from the date of the Board's decision or order, and must be delivered to all parties and filed with the Board.

36.4 A request under Rule 36.2 must include

- a. reasons for the request, including the basis upon which the Board is asked to grant the request;
- b. submissions in support of the request; and,
- c. remedy or relief sought.

36.5 The Board may ask the hearing panel that issued the decision or order in question to consider any request under this Rule.

36.6 The Board will not ordinarily consider a request under Rule 36.2 that is properly the subject of an appeal.

37. REQUESTING LEAVE TO MAKE A NEW APPLICATION

37.1 A party to an application under section 32, section 50 or section 65 or a deemed application under section 37.1, section 54.1 or section 69.1 of the *Health Care Consent Act, 1996* which has been finally disposed of by the Board may request leave to make a new application within six months after the final disposition of the earlier application.

37.2 A request for leave to bring a new application will be made in writing and copied to all the parties.

37.3 The request must include

- a. details of the material change in circumstances which justifies reconsideration of, depending on the application, the decision to admit to a place of treatment or the person's capacity; and
- b. any evidence which supports the request.

37.4 The Board will inform the parties of their right to deliver a written response and supporting evidence to the Board within seven days.

37.5 In exceptional circumstances, the Chair or a member designated by the Chair may order a hearing, which may be held in person or electronically, to hear the request for leave. The Chair

or a member designated by the Chair may make any other procedural order as considered appropriate to deal with the request for leave to bring a new application.

37.6 The Board will issue a written decision to grant or refuse leave after the seven-day period referred to under Rule 37.4 has expired.

37.7 Until leave to bring a new application is granted, any application made under section 32, section 50 or section 65 of the *Health Care Consent Act, 1996* brought within six months after the final disposition of an earlier application will be deemed not received by the Board and will not be considered to be a new application.