

BC Mental Health Review Board

Rules of Practice and Procedure

Effective **August 28, 2018**

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PART 1 – General

Rule 1 – Purpose of Rules

- (1) The purpose of these rules is to provide a fair, just, accessible and understandable process for parties to proceedings before the Board under the *Mental Health Act* (the “Act”).
- (2) The Board may use flexible adjudicative procedures to further the purpose of these rules.
- (3) The Board may issue practice directions to provide information or set requirements for Board practice and procedure.

Rule 2 – Board Powers

- (1) The powers of the Board are set out in the *Act* and the *Administrative Tribunals Act*.
- (2) The Board may exercise any power under these rules at the request of a participant or on its own initiative.
- (3) The Board may waive or vary any of these rules as it considers appropriate in the circumstances in order to ensure a fair, just, accessible and understandable determination of the proceeding.

Rule 3 – Definitions

In these rules:

“Board” means the British Columbia Mental Health Review Board established under section 24.1 of the *Act*;

“case presenter” means a representative of a facility at a hearing;

“director” means a person appointed under the *Mental Health Regulations* to be in charge of a designated facility and includes a person authorized by a director to exercise a power or carry out a duty conferred or imposed on the director under the *Act*;

“document” includes any form of recorded or stored information;

“facility” means a designated facility in which a patient is involuntarily detained under s. 22 of the *Act*; or a mental health team, site or facility if the patient is on leave under s. 37 or 38 of the *Act*;

“hearing” means a review panel hearing under s. 25 of the *Act*;

“member” means a member of the Board appointed under s. 24.1 of the *Act*;

“panel” means a review panel established under s. 24.1 of the *Act*;

“participant” means:

- (a) a patient;
- (b) a patient representative ;
- (c) a case presenter; or
- (d) other representative for a facility.

“party” means a person specified as a party by the statute under which the application arises;

“patient” means a person who is the subject of an application for a hearing under s. 25 of the *Act*;

“patient representative” means a lawyer, advocate, family member, friend, near relative or other person representing the interests of a patient.

Rule 4 – Obligation to Comply with these Rules

Participants must comply

- (1) Participants must comply with these rules and any practice directions issued under rule 1(3), unless the Board or panel orders or directs otherwise.

Technical defects

- (2) A technical defect or irregularity in form will not invalidate the Board’s proceedings and does not constitute non-compliance with these rules.

Failure to comply

- (3) A failure to comply with any of these rules does not invalidate a proceeding.

Conflict

- (4) 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 prevail.

Rule 5 – Public Access to Proceedings Limited

Hearings

- (1) A hearing must be held in private unless the panel orders otherwise.

Public access to application file restricted

- (2) For the purpose of this rule, “application file” means the record of communications maintained by the Board regarding an application for hearing and any other document in the Board’s possession regarding an application or hearing.

- (3) An application file is not available to the public unless a person makes a successful request under the *Freedom of Information and Protection of Privacy Act*.

Confidentiality of disclosed documents

- (4) Documents that a participant obtains through the disclosure process in Part 4 of these rules are confidential.
- (5) A participant must not use a document obtained through the disclosure process in these rules for any purpose other than the application for hearing process in which they were disclosed, except:
 - a) with the consent of the patient; or
 - b) by order of the Board.

Rule 6 – Interpreters and Other Accommodations

- (1) A participant must notify the Board if a patient or witness requires an interpreter or any other accommodation reasonably necessary for a fair hearing.
- (2) This notification shall occur at the time the application for hearing is made or at the earliest possible opportunity thereafter.
- (3) The Board will, at its own expense, arrange for a qualified interpreter or any other accommodation it determines to be reasonably necessary for the proper conduct of the hearing.

PART 2 – Representation and Communications

Rule 7 – Representation before the Board

How patients may be represented

- (1) A patient may be represented by a patient representative, or may be self-represented.
- (2) If a patient is represented by a patient representative, that patient representative shall notify the facility and the Board immediately on beginning to act for the patient, or at the earliest possible opportunity thereafter.

How facilities may be represented

- (3) A facility may be represented by a director, a delegate of the director, or a lawyer.

Communication with patient representative

- (4) If a patient is represented, the Board and facility shall communicate with the patient representative on all issues relating to the application and hearing.

Withdrawal of representative

- (5) A patient representative who ceases to represent a patient must notify the Board and the facility at the earliest possible opportunity thereafter.
- (6) The notice must include confirmation that the patient representative has notified the patient that the patient representative is no longer acting for the patient in the proceeding.

Self-represented patients

- (7) The Board shall inform all patients of their right to representation and give patients the opportunity to obtain representation prior to the hearing.
- (8) Where a patient appears at a hearing without representation, the panel will ensure that the patient has been informed of the right to representation and has had the opportunity to obtain representation.
- (9) A panel may adjourn a hearing to grant a patient an opportunity to obtain representation when it is fair and reasonable in the circumstances.

Responsibilities of participants

- (10) Participants must treat all persons they encounter in the course of a proceeding with courtesy and respect.
- (11) Participants must conduct themselves with honesty and integrity, and must not act in a manner that would undermine the Board's processes.

Failure to comply

- (12) Without limiting rule 4, if the Board determines that a participant has not complied with this rule, the Board may impose restrictions on the participant's continued participation in or attendance at a proceeding, or may exclude the participant from further participation in a proceeding.

Rule 8 – Communications with the Board

Accepted methods

- (1) A communication may be filed with the Board by mail, fax, email, hand, or courier unless the Board directs otherwise.

Notifying the Board

- (2) Notifying the Board means notifying Board staff by phone or by filing a communication in accordance with this rule.

Rule 9 – Address for Delivery

Address for delivery

- (1) “Address for delivery” means a current postal address, and may include a fax number and/or an email address.
- (2) An inpatient’s address for delivery is the address of the facility and, where applicable, the address for delivery of the patient’s representative.
- (3) A patient on leave under s. 37 or 38 of the *Act* may identify the address of the facility, the address of a patient representative, or another address as an address for delivery. If a patient on leave does not provide a new address for delivery, the default address for delivery will be the facility and where applicable, the address of the patient’s representative.

Requirement to provide address for delivery

- (4) A facility must notify the Board of the patient’s address for delivery.
- (5) A patient representative must notify the Board and the facility of the patient representative’s address for delivery.
- (6) Unless the Board is notified of a new address for delivery, a patient’s and a patient representative’s most recent address for delivery will be treated as the address for delivery.

Deemed notice if communication delivered to address for delivery

- (7) A patient is deemed to have notice of a communication if it is delivered to the patient’s address for delivery and, where applicable, the patient representative’s address for delivery.

Rule 10 – Time for Filing and Delivery

Definition of day and business day

- (1) “Day” means a calendar day.
- (2) “Business day” means between 8:30 a.m. and 4:30 p.m. from Monday to Friday, excluding holidays.

Filing or delivery after business day

- (3) A communication received after a business day is deemed to be filed or delivered on the next business day.

Calculation of time

- (4) Days are counted by excluding the first day and including the last day.
- (5) If the last date on which a hearing may be held falls on a day that is not a business day, the hearing may proceed on the next business day.

PART 3 – Applying for a Hearing

Rule 11 – Application for Hearing

- (1) To apply for a hearing under s. 25(1) of the *Act*, a patient, or a person on the patient's behalf, must complete and file a Form 7.
- (2) The Board may dismiss an application without a hearing if the statutory requirements for bringing the application have not been met.
- (3) The Board shall provide reasons for dismissing an application without a hearing under rule 11(2).

Rule 12 – Withdrawal of Application

- (1) A facility that cancels a patient's certification under the *Act* must notify the Board at the earliest possible opportunity thereafter.
- (2) A patient or their representative may withdraw an application for hearing at any time prior to the commencement of a hearing by notifying the Board or panel of the withdrawal.
- (3) Upon withdrawal, a patient or their representative may bring a new application during the same certification period by submitting the request through a communication to the Board in accordance with rule 8.

Rule 13 – Mandatory Reviews

- (1) The Board may schedule a hearing on its own initiative pursuant to s. 25(1.1) of the *Act*.
- (2) When a hearing is scheduled pursuant to s. 25(1.1) of the *Act*, the Board will notify the patient of the hearing, the patient's right to representation at the hearing, and the patient's right to cancel the hearing at any time prior to the commencement of the hearing.
- (3) When a hearing is scheduled pursuant to s. 25(1.1) of the *Act*, the facility must submit a case note pursuant to rule 15(8).

PART 4 – Disclosure before a Hearing

Rule 14 – Disclosure Obligations of the Patient

- (1) If a patient or patient representative intends to rely on or refer to any documents in their possession or control at the hearing, they must provide a copy of those documents to the facility promptly before the commencement of the hearing.

Rule 15 – Disclosure Obligations of the Facility

Records

- (1) Facilities have a duty to disclose all relevant records in accordance with these rules and any practice directions issued under rule 1(3).
- (2) A facility's disclosure obligation is triggered by request. A patient representative must make a request for disclosure to the facility no later than three business days prior to the scheduled hearing. Where reasonably practicable, a self-represented patient must make a request for disclosure according to the same timeline.
- (3) A facility's disclosure obligation may be met by either providing a copy of the relevant documents, or by providing an opportunity to review them. The patient or patient representative should specify in the request for disclosure whether it is for a copy of the relevant documents or an opportunity to review them.
- (4) Patient representatives must make any request for disclosure in writing. Self-represented patients may make oral requests for disclosure.
- (5) When it receives a request to review documents instead of copies, the facility must provide adequate time and an appropriate location for the document review prior to the hearing.
- (6) When it receives a request for the disclosure of a copy of documents, the facility must disclose a copy of all documents in its possession or control that are relevant to the application within two business days of receiving the request. Where a self-represented patient makes a late request for disclosure, the facility must make every effort to disclose promptly before the commencement of the hearing.
- (7) Facilities bear the cost of copying disclosure documents.

Case Note

- (8) A facility must provide a written summary of the evidence it intends to present at a hearing ("case note") to the panel and to the patient representative or self-represented patient no later than 30 minutes before the commencement of the hearing.
- (9) When all or part of a hearing proceeds by electronic means pursuant to rule 19, the facility must make every effort to prepare and deliver a copy of the case note to the Board, and any

other participant that will not be attending in person at the hearing no later than 24 hours prior to the scheduled hearing.

Rule 16 – Application to the Board for Document Disclosure

- (1) An application for an order that a party deliver a copy of a document must state:
 - (a) Why the application is fair and reasonable in the circumstances; and
 - (b) The efforts to obtain a copy of the document.
- (2) A party seeking an order under this rule must seek the position of the opposing party and include that information in the application. A copy of the application must be provided to the opposing party at the same time it is filed with the Board.
- (3) The Board will seek a response from the opposing party before making a decision on the application, where appropriate.
- (4) The opposing party may respond to the application for an order of disclosure with a request to limit disclosure. The request to limit disclosure must be promptly communicated to the Board with an explanation of why limiting disclosure is fair and reasonable in the circumstances.
- (5) The Board's Chair or designate considering an application under this rule may make any order they consider just, fair and reasonable in the circumstances.

Rule 17 – Failure to Comply with Disclosure Requirements

- (1) Without limiting rule 4, if a party fails to disclose any document as required by these rules, or by decision, order, or direction of the Board or panel:
 - (a) the party may not introduce the document as evidence at the hearing without permission of the panel;
 - (b) if the panel grants permission to introduce a document which was not disclosed as required, the panel will permit participants a reasonable amount of time to review the evidence;
 - (c) the Board or panel may make any decision or order it considers appropriate in the circumstances.

PART 5 – Scheduling a Hearing and Process Options

Rule 18 – Consultation Process

- (1) If the Board accepts an application for hearing for filing (“application”), the Board will notify the participants and schedule the hearing in consultation with any or all of the participants.
- (2) If a participant does not respond to the Board’s scheduling request in a timely manner, the Board will schedule the hearing without further consultation.
- (3) The Board may, in appropriate circumstances, schedule a hearing without consultation with any or all of the participants.

Rule 19 – Participation by Electronic Means

- (1) Where appropriate, the Board may decide to conduct all or any part of the hearing by way of electronic means to facilitate the just and timely resolution of the application.
- (2) If the Board determines that a hearing will be conducted by electronic means, it will notify the participants as soon as reasonably practicable prior to the scheduled hearing.
- (3) Any party may object to a hearing by way of electronic means. An objection must be filed at the earliest opportunity prior to the scheduled hearing and set out how a hearing by way of electronic means would cause significant prejudice.
- (4) In circumstances where the Board determines that electronic participation would result in an unfair hearing for the patient, the Board will arrange for a hearing in person to be held at the next reasonably practicable opportunity.
- (5) Where a patient or a patient representative consents to a hearing that is scheduled outside the statutory time period, the patient retains the right to proceed with the hearing within the statutory time period if the panel participates by electronic means.

Rule 20 – Notice of Hearing

- (1) Notice of a hearing shall be served by the Board on the participants in accordance with rule 9.
- (2) A notice of hearing may include any information or directions the Board considers necessary for the proper conduct of a hearing.
- (3) Unless the Board otherwise decides, the hearing will be held as close as possible to the place where the patient is physically located at the time of the hearing.
- (4) The facility will provide a physical space that is private, adequate in size to accommodate all panel members and participants, and appropriate for the proper conduct of the hearing.

Rule 21 – Postponement

- (1) A patient or a patient representative may apply to postpone a hearing.
- (2) Unless the Board otherwise directs, an application to postpone made within two business days of a scheduled hearing must be in writing and state:
 - (a) why the request is reasonable; and
 - (b) why granting the request will not unduly prejudice the other participants.
- (3) At the request of a patient or patient representative, the Board shall reschedule a postponed hearing as soon as reasonably practicable thereafter, but not later than:
 - (a) 14 days in a one month certification period; and
 - (b) 28 days in a three month or six month certification period.

Rule 22 – Patient Transfers and Absences

Transfer

- (1) When a patient who has a scheduled hearing is transferred or released on leave under s. 35, 37, or 38 of the *Act*, at the earliest possible opportunity thereafter, the transferring facility must:
 - (a) notify the Board of the transfer;
 - (b) notify the patient representative of the transfer, if the patient has a representative;
 - (c) notify the receiving facility of the hearing; and
 - (d) arrange for the participation of a case presenter at the hearing in person or by way of electronic means.
- (2) When a patient who has a scheduled hearing is transferred or released on leave under s. 35, 37, or 38 of the *Act*, the receiving facility must at the earliest possible opportunity thereafter notify the Board that the hearing will proceed as scheduled.

Absences

- (3) When a patient becomes absent under s. 41 of the *Act*, the facility must notify the Board and the patient representative of the absence at the earliest possible opportunity thereafter.
- (4) The Board may postpone a hearing involving a patient who becomes absent under s. 41 of the *Act* when it is fair and reasonable in the circumstances.

PART 6 – Hearing

Rule 23 – Appearances

Patient

- (1) A patient must attend the hearing unless the panel orders otherwise.
- (2) A patient may wear attire of the patient's choosing during a hearing. Facilities must not prevent patients from wearing attire of their choosing at a hearing unless they can demonstrate that there is a health and safety risk or that it is not possible in the circumstances.
- (3) A panel may exclude a patient from the hearing, or any part of it, under section 25(2.6) of the *Act* only if it is satisfied that exclusion is in the best interest of the patient.
- (4) Where a patient fails to appear at a hearing, the panel shall wait 30 minutes to give the patient an opportunity to appear. After 30 minutes has lapsed, and in the absence of further information, the panel shall cancel the hearing.
- (5) Where a hearing is cancelled due to failure of the patient to appear and the patient wants another hearing, the patient or their representative must provide reasons for not attending at the earliest opportunity thereafter. The Board may reschedule the hearing during the same certification period where it is fair and reasonable in the circumstances.

Case Presenter

- (6) A case presenter must give evidence and be available to answer questions at the hearing unless the panel orders otherwise.

Witnesses

- (7) Parties must promptly disclose to the other parties a list of the names of the witnesses they intend to call and each witness's relationship to the patient or the application prior to the commencement of the hearing. It is the responsibility of the party calling the witness to contact the witness and make arrangements for their attendance.
- (8) A party may not call as a witness a person whose name and relationship was not disclosed as required by rule 23(7) without permission of the panel.
- (9) Witnesses other than the parties must not be present in the hearing room before they give their evidence, except in exceptional circumstances. The panel may allow such witnesses to remain in the hearing room after giving evidence.

Observers

- (10) Observers may be permitted to attend the hearing with prior approval of the Board or with approval of the panel at the commencement of the hearing.

Rule 24 – Evidence

- (1) A panel hearing the application will determine how the hearing is conducted and may give any directions or make any orders the panel considers necessary for the just and timely resolution of the application for hearing.
- (2) A panel may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information is admissible in a court of law.
- (3) A panel may ask questions of the parties and witnesses and give any directions or make any orders the panel considers necessary for the maintenance of order at the hearing.
- (4) The panel will give parties an opportunity to call witnesses, cross-examine the witnesses of opposing parties, introduce evidence, and make submissions.

Rule 25 – Recordings

- (1) A hearing of an application is recorded by the panel.
- (2) No other recording devices of any kind are permitted at the hearing.
- (3) To request a copy of the audio recording as an accommodation or for other reasons, a participant must apply to the Board.
- (4) The request must be in writing and sent to the Board within one year of the hearing date.
- (5) Approved audio recordings will be provided to participants within 14 days of the request.

PART 7 – Decisions and Orders

Rule 26 – Oral Decisions and Written Reasons

- (1) The panel must issue an oral determination of the application at the conclusion of the hearing, except in extraordinary circumstances.
- (2) The panel must provide written reasons for that determination within 14 days to the director and to the patient or the patient's representative.
- (3) The Board may serve or deliver a determination, decision, or reasons for decision, by any method it deems appropriate in the circumstances.

Rule 27 – Effective Date of Decisions and Orders

- (1) A determination, decision or order is effective on the date on which it is issued, unless otherwise specified by the Board.

Rule 28 – Correcting Decisions and Orders

- (1) The Board may at any time, on its own initiative or at the request of a party, correct a technical error in a written decision or order.
- (2) The Board may at any time, on its own initiative or at the request of a party, reopen an application for hearing in order to cure a jurisdictional defect.
- (3) To request that the Board correct a technical error or jurisdictional defect in a final decision or order, a party must file a request stating the correction sought in writing to the Board Chair.