

# **BC Mental Health Review Board**

## **Rules of Practice and Procedure**

**Effective [Insert date]**

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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) To further the purpose of these rules, the Board may use procedures other than traditional adjudicative or adversarial procedures.
- (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 *Mental Health Act* and *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:

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

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

“case presenter” means a representative from the facility;

“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 representative for a patient;
- (c) a case presenter; or
- (d) the facility.

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

#### **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 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 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 party obtains through the disclosure process in Part 4 of these Rules are confidential.
- (5) A party must not use a document obtained through the disclosure process in these Rules for any purpose other than the application 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.
- (2) This notification shall occur at the time the application is made or at the earliest possible opportunity thereafter.
- (3) The Board will, at its own expense, arrange for an interpreter or any other accommodation as 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 lawyer, advocate, family member, friend, near relative, other person, or may be self-represented.

### **How facilities may be represented**

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

### **Communication with patient representative**

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

### **Withdrawal of representative**

- (4) A representative who ceases to represent a patient must notify the Board at the earliest possible opportunity thereafter.

## **Unrepresented patients**

- (5) The Board shall inform all patients of the right to representation and give patients the opportunity to obtain representation prior to the hearing.
- (6) 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.
- (7) 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**

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

## **Consequences for failure to comply**

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

## **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/or, where applicable, the address of the patient's representative.
- (3) A patient on leave under s. 37 or 38 of the Act or a discharged patient may identify the address of the facility, the address of a representative, or another address as an address for delivery.

#### **Requirement to provide address for delivery**

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

#### **Deemed notice if communication delivered to address for delivery**

- (6) A patient is deemed to have notice of a communication if it is delivered to the patient'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 and 4:30 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**

- (4) A facility that cancels a patient's certification under the *Act* must notify the Board at the earliest possible opportunity thereafter.
- (5) A patient or their representative may withdraw an application at any time prior to a hearing by notifying the Board or panel of the withdrawal.
- (6) Upon withdrawal, a patient or their representative may request leave to bring a new application during the same certification period.
- (7) A request for leave to bring a new application during the same certification period must include why the request is reasonable and fair in the circumstances.

### **Rule 13 – Mandatory Reviews**

- (8) The Board may schedule a hearing on its own initiative pursuant s. 25(1.1) of the *Act*.
- (9) When a hearing is scheduled pursuant to s. 25(1.1) of the *Act*, the Board will notify the case presenter of the requirement to submit a case note.

## **Part 4 – Disclosure before a Hearing**

### **Rule 14 – General Obligations**

#### **General disclosure obligation**

- (1) Parties must promptly deliver to the other parties in a proceeding a copy of any documents that are in their possession and they intend to refer to at the hearing.

#### **Cost of copies**

- (2) Each party bears their own cost of copying documents for another party.

## **Rule 15 – Disclosure Obligations of the Facility**

### **Records**

- (1) The facility must deliver to the patient's representative (or to the patient if the patient is not represented) a copy of all documents in its possession that are relevant to the application within 48 hours of receiving notification of a scheduled hearing.

### **Case Presenter**

- (2) A case presenter may give evidence at a hearing.

### **Case Note**

- (3) A case presenter who gives evidence at a hearing must deliver a written summary of that evidence ("case note") to the Board and to the patient's representative (or to the patient if the patient is not represented) no later than 48 hours before the start of the hearing.
- (4) The Board shall disclose the case note to the panel prior to the start of the hearing when it is reasonable and fair in the circumstances.

## **Rule 16 – Failure to Comply with Disclosure Requirements**

- (1) Without limiting rule 4(2), if a party fails to disclose any document as required by these rules, or by decision, order, or direction of the Board:
  - (a) the party may not introduce the document as evidence at the hearing without permission of the panel;
  - (b) the party may not call as a witness a person whose evidence was not disclosed as required, without permission of the panel;
  - (c) if the panel grants permission to introduce a document or permit a witness to give evidence which was not disclosed as required, the panel will permit participants a reasonable recess to review the evidence;
  - (d) the Board or panel may make any decision or order it considers appropriate in the circumstances.

## **Rule 17 – Application for Document Disclosure**

### **Application for disclosure**

- (1) An application for an order that a person 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.

### **Rule 18 – Application Limiting Disclosure**

#### **Application to limit disclosure**

(2) A party seeking to limit disclosure must:

- (a) apply for an order limiting the scope of disclosure; and
- (b) explain why the request is reasonable and fair in the circumstances.

## **Part 5 – Scheduling a Hearing and Process Options**

### **Rule 19 – Consultation Process**

- (1) If the Board accepts an application for filing, 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 20 – Participation by Electronic means**

- (1) The Board may decide to conduct all or any part of the hearing by way of electronic means where doing so would facilitate the just and timely resolution of the application.
- (2) An objection to participation by electronic means must be filed at least three business days prior to the scheduled hearing and set out how a hearing by way of electronic means would cause the applicant significant prejudice.
- (3) 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 possible opportunity.
- (4) Where a patient or their representative consents to a hearing that is outside the statutory time period, the patient retains the right to proceed with the hearing within the statutory time period with electronic participation by the panel.

## **Rule 21 – Notice of Hearing**

- (1) Notice of a hearing shall be served by the Board on the participants.
- (2) A notice of hearing may include any information or directions the Board considers necessary for the proper conduct of a hearing.
- (3) The Board may serve notice of a hearing by way of telephone call, only if the Board considers this form of notice appropriate and necessary in the circumstances.
- (4) 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.
- (5) 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 22 – Postponement**

- (1) A patient or their representative may apply to postpone a hearing.
- (2) An application to postpone a hearing must 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 their representative, the Board shall reschedule a postponed hearing as soon as possible thereafter.

## **Rule 23 – 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's 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:

- a. notify the Board that the hearing will proceed as scheduled; or
- b. apply to postpone the hearing.

### **Unauthorized Absences**

- (3) When a patient becomes absent under s. 41 of the *Act*, the facility must notify the Board 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 24 – Appearances**

#### **Patient**

- (1) A patient must attend the hearing unless the panel orders otherwise.
- (2) A patient has the right to wear attire of the patient's choosing during a hearing.
- (3) A facility may apply to the Board or panel to restrict a patient's right to wear attire of the patient's choosing if the facility demonstrates that wearing such attire poses a health and safety risk for the patient or other participants.
- (4) 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.

#### **Case Presenter**

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

#### **Failure to Appear**

- (6) Where a case presenter fails to appear at a hearing, and the panel is satisfied that a case presenter received notice of the hearing, the panel may proceed in the case presenter's absence.
- (7) 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.
- (8) Where a patient fails to appear at a hearing and 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.

## **Observers**

- (9) 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.
- (10) An observer who is in attendance at a hearing may not provide evidence.

## **Rule 25 – Evidence**

### **Evidence**

- (1) A panel hearing the application will determine how the hearing is conducted and may:
  - a. ask questions of the parties and witnesses;
  - b. give any directions or make any orders the panel considers necessary for the just and timely resolution of the application; and
  - c. give any directions or make any orders the panel considers necessary for the maintenance of order at the hearing.
- (2) The panel will give parties an opportunity to call witnesses, cross-examination the witnesses of opposing parties, and introduce evidence. No evidence may be presented during opening statements.

### **Oath or Affirmation**

- (3) The panel may require that evidence be given under oath or affirmation.

### **Order Excluding Witnesses**

- (4) 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.

### **Final Submissions**

- (5) After all of the parties have had an opportunity to present evidence, the panel shall give all parties an opportunity to make a final argument in support of the decision or order they want the panel to make. No new evidence may be presented during final argument.

## **Rule 26 – Recordings**

## **Hearings are recorded**

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

## **Part 7 – Decisions and Orders**

### **Rule 27 – 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 28 – 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 29 – 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 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.