

BC Mental Health Review Board

Rules of Practice and Procedure

Effective January 31, 2020

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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 proceeding 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 guidance on how to comply with these rules.

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 to further a fair, just, accessible and understandable 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*;

“*Discharge Advocates*” may assist the panel when a patient is self-represented to test the facility’s case for continued detention.

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

“facility” includes 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) *discharge advocates*;
- (d) witness;
- (e) a case presenter; or
- (f) 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, relative or other person representing the interests of a patient;

“proceeding” means any process started under the *Act*.

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 otherwise.

Technical defects

- (2) A technical defect or irregularity in form will not invalidate a proceeding 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.
- (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 obtained through the disclosure process in Part 4 of these rules are confidential and must only be used for the purposes of the hearing.
- (5) A participant must not disclose a document obtained through the disclosure process in these rules 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 will occur at the time the application for hearing is made or at the earliest possible opportunity.
- (3) The Board will, at its own expense, arrange for an interpreter or any other accommodation reasonably necessary for a fair hearing.

PART 2 – Representation and Communications

Rule 7 – Representation before the Board

How patients may be represented

- (1) A patient may present their own case or have someone represent them at the hearing.
- (2) A patient representative who begins representing a patient must notify the Board and facility as soon as possible.

How facilities may be represented

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

Communication with patient representative

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

Withdrawal of representative

- (5) A patient representative who stops representing a patient must notify the Board and the facility as soon as possible.
- (6) The notice must include confirmation that the representative has notified the patient that the representative is no longer acting for the patient in the proceeding.

Discharge advocates

- (7) The Board may appoint a representative to participate in the hearing, or part of the hearing as *discharge advocates* when a patient is self-represented to test the facility's case for continued detention and assist the panel in reaching a fair and just resolution of the proceeding.
- (8) The Board may define the role of *discharge advocates* on a case-by-case basis. A *discharge advocate* is not a party to the proceeding.

Self-represented patients

- (9) The Board will inform all patients of their right to representation and give patients an opportunity to obtain representation prior to the hearing.
- (10) Where a patient appears at a hearing without representation, the panel will ask the patient if they had the opportunity to obtain representation.
- (11) A panel may adjourn a hearing to give the patient an opportunity to obtain representation when it is fair and reasonable in the circumstances.

Responsibilities of participants

- (12) Participants must treat all persons in the course of a proceeding with courtesy and respect.
- (13) 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

- (14) Without limiting Rule 4, if the Board or panel determines that a participant has not complied with this rule, the Board or panel may impose restrictions on the participant's continued participation in 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) A participant may notify Board staff by phone or by filing a communication using the methods in Rule 8(1).

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 non-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 will provide reasons for dismissing an application without a hearing under Rule 11(2).

Rule 12 – Withdrawal of Application

- (1) A patient or their representative may withdraw an application for hearing at any time before the start of the hearing by notifying the Board or panel of the withdrawal.
- (2) 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 using methods set out in Rule 8(1).

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.
- (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(6).

PART 4 – Disclosure before a Hearing

Rule 14 – Disclosure Obligations of the Patient

Self-Represented Patient

- (1) A self-represented patient who wants to refer to a document at a hearing must provide a copy of that document to the facility before the start of the hearing, or in circumstances when it is fair and reasonable, during the hearing.
- (2) The facility bears the cost of copying the document.

Patient Representative

- (3) A patient representative has a duty to disclose copies of any document they intend to rely on at the hearing. A patient representative must provide a copy of that document to the facility no later than 24 hours before the start of the hearing, or in exceptional circumstances, no later than 30 minutes prior to the start of the hearing.

Rule 15 – Disclosure Obligations of the Facility

Records

- (1) Facilities have a duty to disclose copies of all relevant records in accordance with these rules and any practice directions issued under Rule 1(3).

Disclosure Obligations

- (2) Facilities' disclosure obligations are triggered after receiving a hearing notice from the Board in accordance with Rule 19.
- (3) Facilities must provide a copy of all documents in its possession or control that are relevant to the hearing as early as possible no later than 24 hours before the start of the hearing. In exceptional circumstances, facilities may be given permission to disclose no later than 30 minutes before the start of the hearing.
- (4) Facilities bear the cost of copying disclosure documents.

Request from Self-represented Patient

- (5) Self-represented patients may request to review documents. When it receives a request to review documents, the facility must provide the patient adequate time and an appropriate location for the document review prior to the hearing.

Case Note

- (6) A facility must provide a written summary of the evidence it intends to present at a hearing ("case note") to the patient or their representative no later than 24 hours before the start of the hearing, or in exceptional circumstances, no later than 30 minutes prior to the start of the hearing.
- (7) The case note must be provided to the panel prior to the start of the hearing and will be marked as an exhibit and entered into evidence.
- (8) When all or part of a hearing proceeds by electronic means under Rule 20, the facility must make every effort to disclose a copy of the case note to the Board and any participant no later than 24 hours prior to the scheduled hearing.

Rule 16 – Application for Document Disclosure

- (1) There is a presumption that patients will have access to all documents that are relevant to the hearing. It would require an exceptional set of circumstances where relevant records would not be disclosed. If a facility has decided to limit disclosure, it must notify and explain to the patient or their representative the exceptional circumstances that justify limits on disclosure.
- (2) An application for an order that a party deliver a copy of a document must explain why the application is fair and reasonable in the circumstances. 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. The Board will make any order that is just, fair and reasonable in the circumstances.

Rule 17 – Failure to Comply with Disclosure Requirements

- (1) Subject to the provisions of Rule 4, if a party fails to disclose any document as required by these rules, or by decision or order 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 as evidence at the hearing, the panel will permit participants a reasonable amount of time to review the evidence;
 - (c) the panel may reschedule a hearing in circumstances where failure to comply with disclosure requirements prejudices a patient to the extent that it would be unfair to proceed with the hearing as scheduled.

PART 5 – Scheduling a Hearing and Process Options

Rule 18 – Consultation Process

- (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 *Act*.
- (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.

Rule 19 – Notice of Hearing

- (1) The Board will serve notice of a hearing 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.
- (5) When a patient has a scheduled hearing, and their certification under the *Act* is cancelled, the facility must notify the Board as soon as possible.

Rule 20 – 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, and in accordance with the *Act*.
- (2) If the Board determines that a hearing will be conducted by electronic means, it will notify the participants as soon as possible prior to the scheduled hearing.
- (3) Any party may object to a hearing by way of electronic means. An objection must be filed as soon as possible and set out how a hearing by way of electronic means would cause significant prejudice to the patient.
- (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 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 will 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 with a scheduled hearing is transferred or released on leave under s. 35, 37, or 38 of the *Act*, the transferring facility must as soon as possible:
 - (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 as soon as possible 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 as soon as possible.
- (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 clothing of their choosing during a hearing. Facilities must not prevent patients from wearing clothing of their choosing at a hearing unless they can demonstrate that there is a health and safety risk or not possible in the circumstances.
- (3) Where a patient fails to appear at a hearing, the panel will 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 may cancel the hearing.
- (4) 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. The Board may reschedule the hearing during the same certification period where it is fair and reasonable in the circumstances

Case Presenter

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

Witnesses

- (6) A party may call witnesses to give evidence in the hearing.
- (7) A party is responsible for contacting witnesses and making arrangements for their attendance.
- (8) A party must disclose to the panel the names of witnesses they intend to call before the start of the hearing.
- (9) A panel must exclude witnesses, other than the parties, from the hearing room before they give evidence. A panel may allow witnesses to remain in the hearing room after giving evidence.

Observers

- (10) A panel may permit observers to attend the hearing with consent of the patient or by order.

Rule 24 – Evidence

- (1) A panel may require that evidence be given under affirmation.
- (2) A panel 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 hearing.
- (3) 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.
- (4) 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.
- (5) A 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. The panel may allow persons requiring accommodation the use of any assistive device to enable them to participate in a hearing.
- (3) A participant must apply to the Board to request a copy of the audio recording.
- (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 panel 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.