



British Columbia

MENTAL HEALTH REVIEW BOARD

Effective Date: 2020/01/31

Title: Practice Direction – Patient Representatives and *Discharge Advocates*

This Practice Direction describes the procedures that must be followed by patient representatives and *Discharge Advocates* to ensure a fair and timely hearing. *Discharge Advocates* are not instructed by patients to represent them at the hearing. Rather, *Discharge Advocates* attend the hearing at the request of the Mental Health Review Board [Board] to test the facility’s case for continued detention. The review panel will define the role of *Discharge Advocates* on a case-by-case basis which may include participating in cross-examination, drawing the panel’s attention to evidence in favour of discharge from the records, and presenting legal submissions in support of discharge, where appropriate.

Guiding Principles:

The Board honours the obligations and is guided by the principles contained in the *United Nations Convention on the Rights of Persons with Disabilities* and the values contained in the *Charter of Rights and Freedoms*.

Summary:

A patient may present their own case or have someone represent them at a hearing. Patients may be represented by advocates from the Mental Health Law Program [MHLP]. Patients may also choose to hire a lawyer or ask a family member, friend, or other person to represent them. The Board may also appoint a legal representative to participate in the hearing as a discharge advocate to assist the panel in reaching a fair, timely, and just decision.

Do you want free legal representation?

Please check the MHLP box on the Form 7 Application for a Review Panel Hearing. By checking this box, you consent to the release of your records to the MHLP. A copy of your records will be sent to an MHLP advocate who will represent you at your hearing.

Direction:

Patient Representatives must notify

A patient representative who starts representing a patient must notify the Board and facility as soon as possible. The notice must include an address for delivery of communications.

- Non-MHLP advocates must complete a form with the facility as soon as possible which confirms their name and contact information, that they are acting for the patient, and the confidentiality obligations regarding the documents.

A patient representative who stops representing a patient must notify the Board and facility as soon as possible. The notice must include confirmation that the patient representative has notified the patient that they are no longer acting for the patient.

Communications with Patient Representatives

If a patient is represented, the Board and facility will communicate with the patient representative on all issues regarding the hearing.

Disclosure of documents from the facility

Patient representatives do not have to request disclosure of documents.

- MHLP advocates do not need to fill out any forms.
- Non-MHLP advocates must complete a form with the facility which confirms their name and contact information, that they are acting for the patient, and the confidentiality obligations regarding the documents as soon as possible and no later than 24 hours of coming on record as representing the patient.

Facilities will disclose copies of all relevant records in their possession or control as early as possible and 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.

Documents obtained through the disclosure process are confidential and must only be used for the purposes of the hearing, except with the consent of the patient, or by order of the Board. More information about disclosure can be found in the Practice Direction: Disclosure.

The evidence provided by the facility must demonstrate how the patient continues to meet all four criteria for continued involuntary detention under the *Act*. The evidence provided by patients or their representatives must demonstrate why the patient should be discharged.

Patient Representatives must disclose documents prior to the hearing

A patient representative who wants to refer to a document at a hearing must provide a copy of that document to the facility as early as possible and 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.

A patient representative who wants to call a witness must make arrangements for their attendance. A witness may attend in person or by electronic means.

Patient Representatives must be prepared for the hearing

A patient representative must attend the hearing at the scheduled time. The Board will schedule a hearing in consultation with participants. However, when a participant does not respond to the Board's requests in a timely manner, the Board may schedule a hearing without consultation. Patient representatives are required to read the case note and any relevant documents before the hearing starts.

Participation of *Discharge Advocates*

Where an advocate ceases to represent a patient, the Board may request the appointment of a *Discharge Advocate* to participate in the hearing. *Discharge Advocates* are not a party to the proceeding. They may be invited to attend the hearing by the Board when patients are unrepresented.

The purpose of a *Discharge Advocate* is to test the facility's case for continued detention in order to assist the panel in reaching a fair and timely decision. This may include participating in cross-examination, drawing the panel's attention to evidence in favour of discharge from the records, and presenting legal submissions in support of discharge, where appropriate. The Board or panel will define the role of *Discharge Advocates* on a case-by-case.

Responsibilities of participants

Patient Representatives and *Discharge Advocates* are participants in hearings. Participants must treat all persons in the course of a hearing with courtesy and respect. Participants must conduct themselves with honesty and integrity, and must not act in a manner that would undermine the Board's processes.

**Diana Juricevic
Chair, Mental Health Review Board**