



# British Columbia

## MENTAL HEALTH REVIEW BOARD

---

**Effective Date: 2020/01/31**

**Title: Practice Direction – Mandatory Review Process**

This Practice Direction describes the procedures that must be followed to ensure that all mandatory reviews are conducted in a fair and timely manner.

**Guiding Principles:**

The Mental Health Review Board [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:**

Section 25(1.1) of the *Mental Health Act* [Act] requires a mandatory review of the treatment records for all patients who are on extended leave for 12 or more consecutive months when no review panel hearing has been held during this time. This provides a safeguard against long-term detention for patients on extended leave. The Board Chair or delegate must:

1. review the patient's treatment record [record];
2. assess that record in relation to the four criteria set out in section 22(3) of the *Act*; and
3. decide whether there is a reasonable likelihood that the patient would be discharged following a hearing.

The Board must order a hearing where there is a reasonable likelihood that the patient would be discharged following a hearing.

**Direction:**

**Facility Responsibilities Step-By-Step**

**1. Duty to provide patient lists every six months**

Health Authorities must monitor the length of patient certification and frequency of their requests for review panel hearings. The Board asks Health Authorities **every six months** for an updated list of all patients who have been on extended leave for 12 or more consecutive months [patient lists]. Health Authorities should receive these requests every January and July. Health Authorities are required to provide the Board their patient lists promptly and no later than two weeks after the Board's request.

**2. Duty to provide Directive every 12 months**

Facilities must give written notice to the Board of any patient who has been on leave or transferred to an approved home under section 37 or 38 of the *Act* for 12 or more consecutive months and a review panel hearing has not been requested or held within that period [Directive].

The Directive must specify the dates of the patient's leave or transfer, and the last review panel hearing, if any. The Directive must be received one month before the patient reaches 12 consecutive months of extended leave. A copy of the Directive is attached to this Practice Direction.

### **Do you want a hearing?**

The Board will schedule a hearing when the patient fills out the Directive and wants a hearing. Facilities must provide a Form 7 to the Board in these circumstances.

### **3. Duty to provide treatment records when requested**

Facilities must provide treatment records when requested by the Board. The Board asks for treatment records when a patient:

- Does not fill out the Directive; or
- Fills out the Directive and wants their file reviewed.

The Board does not request treatment records when a patient fills out the Directive and indicates:

- I do not wish a hearing at this time and waive my rights to have my file reviewed.

### **Board Responsibilities Step-by-Step**

#### **1. Duty to review treatment records**

The Board will review the treatment records for a patient who:

- Does not fill out the Directive; or
- Fills out the Directive and wants their file reviewed

#### **2. Duty to assess treatment records**

The Board Chair or delegate assesses the treatment records to determine whether there is a reasonable likelihood that the patient would be successful at a review panel hearing at this point in time. This assessment is done on a balance of probabilities. The onus is on the facility to provide sufficient evidence that the patient continues to meet all four criteria under the *Act* based on their current diagnosis and level of functioning. The legal test is set out under section 22(3) of the *Act* and there are four questions that must be answered:

- (1) Is the patient suffering from a disorder of the mind that requires psychiatric treatment and seriously impairs their ability to react appropriately to their environment or to associate with others?
- (2) Does the patient require psychiatric treatment in or through a designated facility?
- (3) Does the patient require care, supervision and control in or through a designated facility to prevent their substantial mental or physical deterioration or for their own protection or the protection of others?
- (4) Can the patient not be suitably admitted as a voluntary patient?

### **3. Duty to issue a decision with sufficient reasons**

The Board Chair or delegate will decide whether there is a reasonable likelihood that the patient would be successful at a review panel hearing at this point in time. If there is, then a hearing is ordered. If there is not, then a hearing is not ordered. Any decision will be issued in writing with sufficient reasons that is sent to the facility and patient.

### **4. When a hearing is ordered**

A hearing must be ordered when it is reasonably likely that at least one criteria for continued detention is not met. In other words:

- The answer to any of the four questions is “no”; or
- There is not enough evidence to answer a question.

The Board will schedule a hearing and notify the participants. 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. The Board will notify the case presenter of the requirement to provide a case note.

### **5. When a hearing is not ordered**

A hearing is not ordered when it is reasonably likely that all four criteria for continued involuntary detention continue to be met. In other words:

- The answer to all four questions is “yes”.

The Board will notify the patient of the decision, reasons for the decision, opportunity to obtain free legal assistance, and the patient’s right to apply for a review panel hearing regardless of its decision.

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