

# COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

## EXPERT EVIDENCE

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The usual role of a witness is to provide evidence about what he or she saw, heard or experienced that is relevant to the appeal. A witness is generally not permitted to give evidence that is outside his or her first hand knowledge, or to explain and offer an opinion about matters that are beyond the knowledge and understanding of the ordinary person.

An “expert witness” is a special kind of witness who through recognized education, training, or experience has expertise in a field that is beyond the knowledge and understanding of the ordinary person (such as expertise in a scientific, technical, medical or other professional field). Rather than providing evidence of what he or she saw, heard or experienced that is relevant to the appeal, the expert witness explains and offers his or her informed opinion about evidence that requires special expertise to be understood.

Expert evidence is submitted only when expert assistance is needed to understand evidence in an area beyond the knowledge and understanding of the ordinary person that is relevant and important to an issue on the appeal. As a result, expert evidence may be a benefit for some appeals, but there may be no place at all for expert evidence in many other appeals.

A participant who wishes to submit expert evidence must give advance written notice of the expert’s qualifications and evidence to the Board and all other participants in the appeal. The notice must be in the form of an “expert report” under Rule 19 of the Appeal Board Rules of Practice and Procedure. The expert report must be delivered at least 30 days before the scheduled hearing date, unless the Board has authorized a shorter time frame. The party submitting the expert evidence must arrange for the expert to attend the hearing to be questioned about their evidence, unless the Board has authorized or the other participants have agreed that the attendance of the expert witness is not necessary.

The expert report must include the following:

- a) a brief statement of the intended expert’s qualifications and specific expertise, with attached resume;
- b) the evidence that the expert will give at the hearing; and
- c) reference to, or a statement of, the facts on which their expert evidence is based.

If a participant wants to submit their own expert evidence in response to expert evidence that is intended to be submitted by another participant, they must submit a responding expert report to the Board and the other participants in the appeal at least 7 days before the scheduled hearing.

The purpose of advance notice of expert evidence is to give other participants in the appeal an opportunity to review and consider the expert evidence, and the facts upon which it is based, in order to prepare questions to ask at the hearing and to consider whether they wish to submit their own responding expert evidence.

The Board will not usually permit a party to submit expert evidence that was not provided to other participants in advance of the hearing. Failure to comply with the requirements for advance notice of expert evidence is likely to result in the exclusion of the intended expert evidence altogether or in postponement of the hearing.

At the hearing the intended expert witness is first asked to briefly explain his or her expert qualifications. This usually involves the witness identifying the highlights of his or her qualifications from their resume. Each participant is given an opportunity to question the witness on their qualifications before the Board decides whether the witness is qualified to submit expert evidence.

If the Board decides that the intended expert witness is qualified to give expert evidence, and that their evidence will be relevant and important to the appeal, the participants in the appeal are given the opportunity to question the expert witness about his or her evidence.

Because the Board has established its own rules for the introduction of expert evidence and the testimony of experts, (see Rule 19), sections 10 and 11 of the *Evidence Act* do not apply to expert evidence in hearings before the Board. If there is conflict between the Board rules and sections 10 or 11 of the *Evidence Act* the Board rules apply.