

COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

FREQUENTLY ASKED QUESTIONS REGARDING AN APPEAL

Once a complete Notice of Appeal is filed and served on the respondent, what happens next?

The licensing, certification or registration official who made the decision being appealed (called the respondent) will be notified of the appeal and requested to provide a complete copy of the Record. The appeal Record consists of the decision being appealed, the respondent's reasons for decision, all documentary evidence, reports, policies, legislative provisions and submissions considered by the respondent in making the decision.

Is the decision still in effect once an appeal is filed?

Yes, the decision under appeal is still valid or in effect unless the Board makes an order to "stay" or prevent the decision from taking effect until after the appeal is decided. The Board may only do this if it is satisfied that temporarily suspending the decision below would not risk the health or safety of a person in care.

Will the hearing be conducted in person (orally) or in writing?

The chair of the Board will decide whether to hold an oral hearing or a hearing in writing. In most cases, a full oral hearing will be conducted. However, the Board will consider any requests for a hearing to be conducted in writing and in some circumstances, will order a written hearing on its own initiative.

How long will it take for the appeal to be heard by the Board?

Oral hearings will be held as early as conveniently possible depending on a number of factors including: the urgency of the appeal issues, the complexity of the issues under appeal and the availability of all the parties to an appeal and any witnesses. A written hearing may be scheduled to begin earlier, but can take longer to complete because each party is given the opportunity to respond to the written submissions of the other parties. The Board will make its best efforts to hear each appeal, orally or in writing, within 120 days of receiving the notice of appeal.

Will the entire Board hear the appeal?

No. Oral hearings are normally conducted by a panel of one or three members of the Board who will then make a decision on the appeal. A written hearing is normally reviewed and decided by one member of the Board.

When and where will the hearing be held?

If the hearing is in writing, the Board will provide a schedule of the deadlines for the written submissions. If there is to be an oral hearing, the Board will set the hearing date and the location, usually in consultation with the parties. When scheduling an oral hearing, the Board attempts to provide the parties with sufficient notice of a hearing to allow them to prepare. An oral hearing is normally held near the facility that is the subject of the appeal or the closest major city to the appellant's place of residence.

What if the date of the hearing needs to be changed?

If a party needs the date set for hearing changed, they must write to the office of the Board as soon as possible to explain the reasons for the change and ask for a postponement. The Board will not normally change the date unless all parties agree to the change or there are special circumstances involved.

What if a party misses the submission deadline or the hearing?

If, without first notifying the Board, the appellant does not provide its written submissions or does not attend the hearing on the scheduled date, the appeal may be considered abandoned and dismissed.

If, without first notifying the Board, the respondent or other party does not attend the hearing or provide their written submissions, the appeal may be decided in their absence.

Can I talk to the members of the Board about my case or the decision in my case?

No. The Board members cannot discuss an appeal with a party unless all other parties are included in the discussion or consent to the discussion taking place, nor can a member discuss his or her reasons for a decision. Once a decision is rendered in an appeal, the decision "speaks for itself".

What is an appeal management conference?

An appeal management conference is a meeting, usually by telephone conference call, conducted by a member of the Board or one of its staff, usually the Board Director, and attended by the participants to the appeal. The purpose of an appeal management conference is to discuss the issues raised by the appeal, the likely evidence, the best method of managing and hearing the appeal and whether all or part can be resolved between the parties without a hearing and decision by the Board. An appeal management conference may be scheduled by the Board on its own initiative or at the request of a participant in the appeal. Even if an appeal management conference does not result in the resolution of the appeal, it usually helps the parties to understand and narrow the issues, identifying areas of agreement and disagreement and allowing the appeal process to run more smoothly.

Can I abandon an appeal after it has been filed?

Yes, an appellant may withdraw his or her appeal at any time by informing the Board in writing and the Board will then dismiss the appeal.

Do I have to arrange for witnesses to attend an oral hearing?

Yes, unless you will be relying solely on the documents and your own presentation at the hearing. It is up to each party to decide whether or not to ask other people to come to the hearing to testify as a witness. If you intend to call someone as a witness, you should approach the person(s) you want as witnesses as early as possible to ensure the person is able to attend the hearing on the scheduled date.

Can an appellant ask a government or health authority employee to appear as a witness at an oral hearing?

Yes. There is no "ownership" in a witness. However, the appellant should first ask the respondent whether that employee will be called as a witness for the respondent at the hearing. If the person is going to be a witness for the respondent, the other parties will have an opportunity to ask the employee questions at the hearing as well.

What can I do if my witness refuses to voluntarily attend an oral hearing or someone refuses to give me documents?

If a witness refuses to attend the hearing voluntarily, a participant may contact the Board to obtain a summons form to require the witness to attend and testify. The participant that wants to summons a witness is responsible for completing the summons form, serving it on the witness and providing the witness with reasonable estimated travel expenses in advance of their required attendance. If the witness believes that they have no evidence to offer that is relevant to the appeal or the date or time of the hearing is a hardship for them, they may ask the Board to cancel or vary the summons.

What if I want to have an expert testify at a hearing or provide a written expert report?

Experts are the only witnesses who are allowed to testify about their opinions. This can include professionals or specialists who have knowledge and experience in fields that are outside the knowledge and comprehension of ordinary people. There are special rules and deadlines for expert witnesses. If you anticipate calling an expert witness, you should notify the Board office well in advance of the oral hearing to discuss what needs to be done. Usually a participant who wants to submit the evidence of an expert must deliver a report stating the qualifications and evidence of the expert at least 30 days before the hearing and unless the other participants agree its not necessary, the expert must be available for questioning at the hearing.

Can I find out ahead of time what the other parties are going to be saying at the hearing?

Yes. The Board usually asks each party to provide, prior to the hearing, an outline of their case (called a Statement of Points) and any relevant documents they will be referring to at the hearing. More information about the Statement of Points and disclosure of documents will be sent to the participants by the Board office early in the appeal process.

Can I present new evidence that was not before the previous decision-maker?

Yes, the board may hear and consider new evidence and arguments from the participants that was not presented to the previous decision-maker.

What if I want to use audio-visual equipment at an oral hearing?

If you want to use an overhead projector, flip chart, VCR etc. at a hearing, you should confirm the availability of such items with the hotel or office scheduled for the hearing and make arrangements accordingly. The Board will not pay for the rental of such equipment.

How long are oral hearings?

The length of a hearing depends on the complexity of the appeal and the number of witnesses, if any, each party calls to testify. Some hearings take one hour, others take two days. The average length is between ½ a day and one full day. To reduce the length of a hearing, the participants should communicate with each other before the hearing and be well prepared.

What happens at an oral hearing?

Each participant has an opportunity to present his or her case to the Board. The appellant usually goes first, followed by the respondent. Each participant can testify (give oral evidence) which may be supplemented by documents and visual aids (eg. photographs, drawings, etc.) Witnesses, including the participants, will be asked to swear or affirm the truthfulness of their evidence before testifying. Although oral hearings are structured, the Board makes every effort to be flexible and accommodate the needs and experience of the participants. The Board will send the participants a summary information sheet on how to prepare for a hearing and what to expect at a hearing that provides more detail about the hearing process.

Will the hearing be recorded?

Yes. The Board will arrange for a court reporter to attend and record the proceedings. A transcript of the hearing may be ordered by a participant, who would be responsible for paying the costs of the transcript ordered.

Can I bring documents to the hearing that I have not already provided to the other parties and the Board before the hearing?

Yes. You should try to provide everything well in advance of the hearing but you may still provide additional evidence at the hearing itself. However, you are responsible for bringing enough copies for

each of the other participants, the Board members and the official recorder (usually 6 copies).

Can I ask the Board to visit the facility that is the subject of the appeal?

Yes. If you want to schedule a visit to the facility, please write to the Board as early as possible. Additional time may be required to accommodate the visit in the hearing schedule. The Board may also, on its own initiative, schedule a visit to the facility.

In a written hearing, what should I include in my written submissions?

Everything you want the Board to know about the case should be included in your submissions. This includes the evidence such as documents, reports, diagrams, letters of support, etc. In addition, affidavit evidence or written statements from witnesses may be included. Participants should not assume that someone else will provide the information or evidence to the Board, or that the Board will already know something. The Board gets its information in the appeal directly from the participants and does not make inquiries into the facts of the appeal outside of that process.

When will I get a decision?

A decision is not normally made right after a hearing, although it can be in certain urgent situations. Normally, the Board members that heard the appeal or considered the written submissions will take time to consider all the evidence and provide a written decision with reasons after the completion of the hearing. The Board will provide a written decision in every case and it will be sent to all the participants and will also be posted on the Board's website.

What if I do not agree with the Board's decision?

Generally, once the Board releases a decision, it cannot change its decision. There is no right of appeal from a Board decision, however a participant that is dissatisfied with a decision of the Board can apply to the Supreme Court of British Columbia for a judicial review under the *Judicial Review Procedure Act*, RSBC 1996 c. 241.