



Community Care and Assisted Living Appeal Board

EXPERT EVIDENCE

The usual role of a witness is to provide evidence about what they saw, heard or experienced that is relevant to the appeal. A witness testifies to the facts that the witness observed. With some exceptions, a witness is not permitted to go beyond the facts they observed and offer an opinion. An “opinion” means the witness giving their opinion on what further facts or conclusions may be inferred, or “drawn”, from the evidence. That is the role of the Board members hearing the appeal (the “Panel”) after hearing submissions from the parties. However, where the subject matter is beyond the knowledge and understanding of the ordinary person, and hearing from an expert would be helpful to the Panel, expert opinion evidence may be permitted. A party who wants to present expert opinion evidence at a hearing must follow the steps described below.

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 they saw, heard or experienced that is relevant to the appeal, the expert witness explains and offers their informed opinion about evidence that requires special expertise to be understood. Sometimes an expert witness can also testify to facts that they directly observed in addition to providing their expert opinion. An expert witness may provide an opinion based both upon the facts they directly observed, and on facts testified to by other witnesses. For the Panel to rely on an expert’s opinion evidence, the Panel must first find that they accept the evidence of facts upon which the opinion is based.

Because expert evidence is only helpful and permitted when the subject matter goes beyond the knowledge and understanding of the ordinary person, not all appeals require expert evidence.

Required steps for submitting expert evidence

- a) 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.
- b) The notice must be in the form of an “expert report” under [Rule 19](#).
- c) The expert report must be delivered at least 30 days before the scheduled hearing date, unless the Board has authorized a shorter time frame.
- d) The participant submitting the expert evidence must arrange for the expert to attend the hearing to be questioned about their evidence, unless the Board has



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ordered, 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 expert evidence in response to expert evidence that another participant is submitting, 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, to prepare questions to ask at the hearing, and to consider whether they want 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 provide 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 expert witness is first asked to briefly explain their expert qualifications. This usually involves the witness identifying the highlights of their qualifications from their resume. Each participant is given an opportunity to question the expert witness on their qualifications before the Board decides whether the witness is qualified to submit expert evidence.

If the Board decides that the 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 their 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 a conflict between the Board rules and sections 10 or 11 of the *Evidence Act*, the Board rules apply.

A party obtaining an expert report and arranging for the attendance of the expert to provide evidence at a hearing is responsible for paying the fees of the expert.