



Community Care and Assisted Living Appeal Board

PREPARING FOR AN ORAL HEARING

This is an information document designed to assist you in preparing for your hearing before the Board. It is not intended as a substitute for the *Community Care and Assisted Living Act* or its Regulations, or the *Administrative Tribunals Act*.

Parties are free to discuss their case and try to resolve the matter on their own before the hearing. The Board encourages parties, wherever possible, to communicate directly with one another throughout the process in an effort to resolve some or all of the issues before the hearing starts.

If you are the Appellant (the person or organization bringing the appeal), you have what is known as “the burden of proof” in the appeal. This means that to be successful in your appeal, you must prove to the satisfaction of the panel hearing your appeal that the decision under appeal was not justified.

If you are the Respondent in an appeal, you are expected to provide evidence that supports the original decision. If you believe there are problems with the appeal (for example, no decision has been made which can be appealed or the Appellant does not have standing to bring an appeal) you should bring your concerns to the attention of the Board as soon as possible before the hearing.

The only information the Board will consider in an appeal is the information that the parties present to it. Therefore, everything that you think is relevant to the case should be given to the tribunal and the other party as soon as possible before or during the oral appeal hearing.

How do I prepare for the Hearing?

1. Think about what you really want from this case. Make sure you know what it is you want the Board to decide in your favor. It is useful to start by making a list of what you want out of the appeal.
2. You need to have a clear understanding of the issues to be decided in the appeal and then concentrate on gathering the information you need to build a strong and convincing case to present to the Board.
3. **Evidence:** Evidence is whatever you will use at the hearing to prove your case. You must think about it as soon as possible, so you are prepared at the hearing. There are several kinds of evidence, including:
 - a) oral testimony: a witness comes and makes a statement or answers questions at the hearing (in many hearings, the Appellant or a representative of the Respondent, will be the only witnesses providing oral testimony);



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- b) documentary evidence: documents, such as licensing records, letters, reports, etc. are presented at the hearing by either a witness or a party and may be entered as exhibits;
- c) photographs: photographs are sometimes used as evidence if the person who took them can properly identify them and additional copies are provided to the Board and the other party; and
- d) affidavits: a witness makes a sworn (i.e. using a Notary Public) statement of their evidence in writing; affidavits are usually provided to the Board and the other party in advance of the oral hearing during the exchange of documents and submissions leading up to the hearing.

Try to break your case down into each of its elements and decide what evidence you will use to prove each one. Using the notice of appeal and other documents and evidence you intend to present, consider the points you want to make: this should form the basis of your Statement of Points, which you will file with the Board prior to the hearing. You can use your Statement of Points at the hearing as your speaking notes or a guideline for giving your oral testimony and making your arguments at the hearing.

Check to ensure that you are providing sufficient evidence to establish what you want the Board to decide.

4. **Documents:** You must bring to the hearing all the documents that you will need for yourself, as well as an extra copy to enter as an exhibit at the hearing. The panel hearing the appeal will have copies of all documents that you filed with the Board before the start of the hearing. If you have additional documents to file at the hearing, you must bring extra copies for the panel and the other party to the appeal, in addition to a copy to be entered as an exhibit. You will need to be very familiar with the documents you will use at the hearing. Whenever you or another witness refers to a document in the hearing, you must be able to direct the panel to a copy of that document in the materials filed so that the panel can follow along.
5. **Your role at the hearing:** You may be the main or only witness for your case and you may be asked simply to tell your story. So prepare what you will say. Usually the best way to organize a story is in the order that the events actually happened. Think about how you would explain the case to another person who doesn't know you or the issue(s) involved. Use your Statement of Points and speaking notes to list all the points you wish to cover. ***The panel will make its decision based only on the arguments and evidence it hears at the hearing – make sure you say and produce everything you think might be necessary to prove your case.*** Have a brief opening statement (what you believe the appeal is about and what you want the Board to do) ready to present



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at the beginning of the hearing, as a summary of what you will try to prove at the hearing.

6. **Witnesses:** Each party must decide whether to ask other people to come to the hearing to testify as witnesses. You should approach the people you want as witnesses as early as possible to ensure they are able to attend the hearing on the scheduled date. You should prefer to have witnesses testify who have personal, first-hand knowledge of the facts you want them to tell the hearing panel about. The evidence of a witness with personal, first-hand knowledge is likely to be given more weight. “Weight” refers to the strength of the evidence, or likelihood the evidence will be found reliable and persuasive by the panel. Hearsay evidence is something that the witness only knows about from hearing someone else say it. Hearsay evidence may be allowed where necessary, but because it is second-hand evidence may be given less weight by the panel in its decision.
7. **Expert Witnesses:** Experts are the only witnesses who are allowed to give evidence of their opinions. This can include doctors, accountants, scientists, other professionals or people who have had a lot of experience in their field. There are special rules and deadlines for expert witnesses. If you think you will be calling an expert witness, please notify the Board office immediately to discuss what you need to do. There is also a separate [Information Sheet on expert evidence](#).
8. **Preparing Witnesses:** Think carefully about what questions you will have to ask your witness to get the evidence you need, and write the questions down. Don’t ask questions that suggest the ‘right’ answer. These are called ‘leading’ questions. For instance, don’t ask, ‘Was the light red?’ Instead ask, ‘What color was the light?’ Review the questions with your witnesses before the oral hearing. It is all right for you to discuss the case with them, but you must not tell them what to say. If your witness refuses to attend the hearing voluntarily, you may contact the Board to obtain a summons form to issue to your witness. A summons requires a person to attend a hearing to testify. You are responsible for filling out the summons form and serving it on the person. The person summoned to attend the hearing may ask the tribunal to “vacate” (cancel) the summons.
9. **Cross-examination:** After you have asked your witness your questions, the other party will ask questions of the witness. You also get to do this with witnesses called by the other party. Sometimes cross-examination can be difficult to do. If you need time (i.e. a break) to prepare your questions, you should let the panel know. After you give evidence as a witness in your case (i.e. after you have made your statement or told your story to the panel), the other party will have a chance to ask you questions.
10. **Keeping track of what’s happening during the hearing:** It’s not easy to be speaking, acting as a witness, answering questions, cross-examining other witnesses



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and listening to what another party is saying. If you can, have someone attend the hearing with you to sit beside you and take notes of what's happening. This will help you to keep track of what's going on and help you decide what points (i.e. in response to something someone else has said) you want to bring up later in the hearing. *If you're having trouble keeping up, ask the panel for an explanation or a break so that you can collect your thoughts.*

Oral Hearing Preparation Checklist

- Review the notice of appeal and any other relevant documents.
- Review the results of any appeal management conferences that were held before the oral hearing.
- List what remedies you want from the Board.
- List the points you need to prove to win the appeal.
- Consider how you will prove each one (testimony, documents, photos, etc.).
- Gather the documents you need and organize them in logical order so you can easily refer to them at the hearing and be able to point the panel to the documents as you go along.
- Prepare your statement or outline for your own oral testimony.
- Contact any additional witnesses you decide are necessary.
- Prepare questions for your witnesses and review them together with the witness.
- Prepare a list of potential questions for cross-examination of the other party's witnesses.
- Ensure you have an extra copy of all documents you wish to have entered as an exhibit.
- On your hearing date, plan to arrive well ahead of the scheduled time so that you will be relaxed and ready to begin.
- Prepare a draft of your final submission. The final submission is the argument you will make at the end of the case. In your final submission you may refer to the evidence, make arguments as to which evidence is more reliable and should be believed, what inferences may be drawn from the evidence, what legislative provisions or regulations apply, and what conclusions and orders should be made by the panel, including remedy. Be prepared to be flexible and amend your draft final submission to conform to the evidence that came in at the hearing.



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The Oral Hearing

The Board attempts to keep the proceedings as informal and relaxed as possible under the circumstances. The Appellant will usually present their submissions and evidence to the panel first. The Respondent will then present their submissions and evidence to the panel in support of the original decision.

Most oral hearings are conducted by video-conference, which has been found to be effective and convenient in most cases. If your appeal will be heard by video-conference, you should also read and follow [Practice Directive #3, titled "Electronic Hearing Practice and Procedure"](#).

If your appeal proceeds as an in-person hearing, the hearing will usually be held near the facility that is the subject of the appeal or in the Appellant's home community.

Hearings are open to the public and members of the public are welcome to attend, unless the Board determines that all or part of the hearing should be closed. Participation in the appeal, however, is restricted to the participants and any witnesses. A court reporter may be present to keep a record of the hearing. No other recording of the proceedings by the parties is allowed.

The hearing process will be determined by the panel presiding at the appeal and may vary in each individual case. Please refer to the separate ["Attending the Hearing" Information Sheet](#) for more information about the hearing process.