

Capability and Consent Board

-- mandate, operation, appointments --

The Yukon Capability and Consent Board reviews matters arising from the *Mental Health Act* and the *Care Consent Act*. It is established under the *Care Consent Act*.

RESPONSIBILITIES

Under the *Care Consent Act*, the Board shall:

1. Review all decisions by last resort decision-makers (care providers) for major health care and admission to a care facility. s. 38(1)(a) and (b)

In addition, under the *Care Consent Act*, the Board if requested shall:

2. Review a care provider's determination of a person's incapability or capability to consent to his or her own health care, admission to a care facility or a personal assistance service. s. 39(1)(a)
3. Review a care provider's choice of a substitute decision maker. s. 39(1)(b)
4. Review a decision made by a substitute decision maker for major health care or for admission to a care facility. s. 39(1)(c)
5. Review the decision of a health care provider to issue a certificate of need for financial protection. s. 39(1)(d)
6. Consider who should be the substitute decision maker in the case of disputes between two equally-ranked substitute decision makers. s. 14
7. Consider a request from a substitute decision-maker for direction regarding prior capable wishes. s. 40

Under the *Mental Health Act*, the Board shall:

1. Review all certificates of involuntary admission. s. 30(1)(a)
2. Review all renewals of involuntary admission. s. 30(1)(a)
3. Review all applications to transfer involuntary patients to hospitals outside of the Yukon. s. 24(2), s. 25(1), s. 30(1)(b)

In addition, under the *Mental Health Act*, the Board if requested shall:

4. Review a certificate of involuntary admission, renewal or change of status. s. 31(1)(a)
5. Review a certificate of return. s. 27 (3) and (4)
6. Consider providing authorization for specified treatments (e.g. a chemotherapy regime lasting longer than three months) for a patient in addition to the substitute consent. s. 21(2) in amended Act
7. Consider granting permission to not disclose all or part of the patient's clinical record. s. 43(3)

COMPOSITION

The Capability and Consent Board is made up of:

- Five members of the Yukon Medical Association (two regular members and three alternates)
- Four care providers (two regular members and two alternates) – Must be a registered nurse, registered psychologist, registered occupational

- therapist or registered social worker (registration with a licensing body within Canada)
- Five members of the Law Society of Yukon (three regular members – the Chair and two Vice-Chairs and two alternates)
- Four community members (two regular members and two alternates)

The reason the Board is comprised of 18 people is because matters must be dealt with in a very short time frame. A pool of people is needed to ensure there are enough people to form a three-member panel on short notice. Alternates are called upon for hearings if regular members are not available.

In appointing the Board, an attempt is made to:

- Achieve gender balance;
- Reflect the cultural diversity of the Yukon;
- Include people who have knowledge or experience of people with intellectual disabilities, mental illnesses, physical disabilities, people with brain injuries, or diseases of aging or other degenerative illnesses that can lead to mental incapability.

For hearing matters arising from the *Care Consent Act*, the panel must include at least:

- The Chair or Vice-Chair (a lawyer)
- One care provider or physician
- One community member

For hearing matters arising from the *Mental Health Act*, the panel must include at least:

- The Chair or Vice-Chair (a lawyer)
- One physician
- One community member

PROCEDURE

A hearing must start within seven days after the day the Capability and Consent Board receives written notice of the request for the hearing. This time can be extended to allow time for an informal resolution of the matter if agreed to by all parties.

The exception to this general time limit of seven days is for applications to transfer an involuntary patient under the *Mental Health Act* to a hospital outside of the Yukon. In this case, the Board must hear the matter within 48 hours of receiving the notification from the physician of the intent to transfer the patient.

The law sets out who is a party before the Board for each type of matter that comes before the Board. The Board also has the authority to name additional parties when appropriate when hearing certain matters.

Where appropriate, the Chair will ensure that a reasonable effort is made to resolve informally any differences between the person making the request and other persons interested in the matter.

For matters under the *Mental Health Act* and the *Care Consent Act* that require an automatic paper review, a panel of the Board will review the matter without

holding a hearing. As a result of this paper review, the Board may decide that a hearing is necessary or decide that a hearing is not necessary. For some matters under the *Mental Health Act* (review of certificates of involuntary admission and renewals of certificates), a paper review will only occur if the involuntary patient consents to waive his or her right to a hearing.

If a hearing takes place, it will be conducted as informally as possible given the circumstances.

All the parties to a hearing before the Capability and Consent Board have the right to participate fully. This includes the right to review and copy documents to be used at the hearing, and the right to attend the hearing, make representations at the hearing, and ask questions of others making representations to the Board. All parties have the right to bring a person to the hearing to support or assist them or to speak for them. They also have a right to receive a copy of the Board's decision. Written reasons for the Board's decision will be given to all parties.

APPEALS

Decisions of the Capability and Consent Board may be appealed by any party to the Yukon Supreme Court. An appeal must be made within 30 days of the date of the Board's decision or order.

Appeals may be made on questions of law or fact. The Court may affirm or rescind the Board's decision. The Court may substitute its decision for the Board's decision or it may refer the matter back to the Board for a rehearing.

APPOINTMENTS

Appointments to the Board are for terms of up to three years in duration. Appointments can be renewed.

REMUNERATION TO BOARD MEMBERS

Lay members of the Capability and Consent Board will receive an honouraria of \$300/day. Most hearings of the Capability and Consent Board will be from 1-4 hours. Board members will receive \$150 for any meetings less than 4 hours.

The Chair of the Board will receive an additional amount for his or her duties as Chair of the Board. Physicians and care providers will receive a sessional rate for their expertise provided during reviews and hearings.

All members of the Board will receive \$300/day for attending any training sessions.

Expenses incurred by board members in connection with the performance of their work away from their ordinary place of residence will be reimbursed according to the reimbursement of expenses to members of the public service of Yukon with advance approval by the department of Health and Social Services.

Board members shall also be eligible for a subsidy for child care expenses.

RESPONSIBILITIES OF BOARD MEMBERS

Board members have a serious responsibility to ensure that people's rights are not taken away without sufficient reason and due process. They must be very clear about their mandate coming from the *Mental Health Act* and the *Care Consent Act*. Matters that come before the Board are serious, and Board members must be prepared to make a commitment to educate themselves and participate in any training provided.

All Board members are strongly encouraged to participate in training offered to Board members. This training will be organized to accommodate the schedules of Board members to the extent possible. Board members are also expected to read over materials provided about the Board and its operations and be familiar with the *Mental Health Act* and the *Care Consent Act*.

Hearings of the Board requiring three panel members may occur once or twice a month. This means that some Board members, particularly the alternates, may not be called to attend a hearing very frequently. However, it is important to have a large pool of alternates just in case regular members are not available.

Hearings are called on short notice because a timely response is generally in the interest of all parties. Board members are expected to be available on short notice if at all possible. Hearings can be conducted with one panel member linked up by telephone, but it is preferable to have all three panel members located together in person. The vast majority of hearings will take place in Whitehorse.

The Chair of the Capability and Consent Board has additional duties for the operation of the Board. The Chair is responsible for overseeing all business of the Board and for arranging and conducting any hearings. The Chair can try to resolve matters in an informal manner before a hearing is held. The Chair is responsible for ensuring that written reasons for the Board's decision are produced and forwarded to all parties. The Chair is also responsible for producing an annual report on the activities of the Board and for coordinating any training to Board members. If the Chair is not available, a Vice-Chair assumes the responsibilities of the Chair. An Executive Secretary assists the Chair in carrying out his or her duties.