



Deemed Hearings under the *Mental Health Act*

Disclaimer: This material is prepared by the Psychiatric Patient Advocate Office with the intention that it provide general information in summary form on legal and advocacy topics which is current when first published. The contents do not constitute legal advice or recommendations and should not be relied upon as such. Appropriate legal advice should be obtained in actual situations. While every care has been taken in the preparation of this material, the Psychiatric Patient Advocate Office cannot accept responsibility for any errors or omissions in the material, including those caused by negligence. The Psychiatric Patient Advocate Office is not responsible for the accuracy of information contained on other websites accessed by links from this website.

What is a deemed hearing?

- A deemed hearing under the *Mental Health Act* is an automatic or mandatory hearing before the Consent and Capacity Board.
- You do not request the deemed hearing as the law requires such a hearing to be held under certain circumstances.

Under what circumstances is a deemed hearing be held?

- A deemed hearing must be held in the following three circumstances:
 1. If you are an involuntary patient in a psychiatric facility, each time you are placed on a Form 4 "Certificate of Renewal" for the fourth time (i.e., the 4th Form 4, the 8th Form 4, the 12th Form 4 and so on). This will occur once a year
 2. Each time you are placed on a second renewal of a community treatment order (CTO) (i.e., the 2nd renewal, the 4th renewal, the 6th renewal and so on). This will be once a year.
 3. If you are an informal patient from 12 to 15 years of age and six months have passed since your admission or your last hearing.

What is the Consent and Capacity Board?

- The Consent and Capacity Board (the Board) is an independent body created by the provincial government of Ontario under the *Health Care Consent Act*.
- The Board conducts hearings under the *Mental Health Act*, *Health Care Consent Act*, *Personal Health Information Protection Act* and *Substitute Decisions Act*.

What if I do not want a deemed hearing?

- The deemed hearing is required by law and you cannot cancel it. It is held automatically whether or not you want the hearing.
- You can choose to go to the hearing, but you are not required to do so. If you do not go to the hearing, the Board may still wish to speak to you. You are not required to speak to the Board.

Who notifies the Board of the need for a deemed hearing?

- Either your physician or the officer-in-charge of the psychiatric facility has an obligation to notify the Board of the need for a deemed hearing.

Do I receive rights advice about a deemed hearing?

- Yes. When the doctor or the officer-in-charge signs the renewal, he or she must “promptly” notify the Rights Adviser that the form was completed.
- The Rights Adviser will meet with you to explain your status and the purpose of a deemed hearing. The Rights Adviser will also discuss your legal options and rights. For example, if you choose to attend the hearing and you want a lawyer to represent you, the Rights Adviser can assist you in applying for Legal Aid (if you qualify financially) and in contacting a lawyer on your behalf.

Will I receive a notice of the outcome of the deemed hearing?

- Yes. You will be notified of the decision of the Board. The Board may confirm or revoke your status.
- If your involuntary status is confirmed, you are still an involuntary patient. If the status is revoked, you are a voluntary patient. See the [Voluntary Patient InfoGuide](#) for more information.
- If your CTO is confirmed, you are still on a community treatment order. If the CTO is revoked, you are no longer under its authority.
- If your informal status is confirmed, you are still an informal patient. If the Board decides you should not be informal, it will tell the hospital to discharge you.

Related InfoGuides:

- Voluntary Patients, Involuntary Patients, Informal Patients and Community Treatment Orders.

Questions?

If you have questions contact your local Patient Advocate or Rights Adviser or call the Psychiatric Patient Advocate Office at 1-800-578-2343.