

COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

*Community Care and Assisted Living Act,
SBC 2002, c.75*

APPELLANT: SBR (Operator of a Licensed Child-Care Facility)

RESPONDENT: Clifford Daly, Assistant Director of Health Protection,
Licensing Practice, Interior Health Authority

PANEL: Susan E. Ross, Chair

Continuation of Interim Stay Order

[1] On May 1, 2006 the appellant commenced an appeal to the Board of a reconsideration decision of the Interior Health Authority (Clifford J. Daly, Assistant Director of Health Protection, Licensing Practice) dated April 25, 2006. The decision under appeal cancelled the appellant's licence to operate a group child care facility under section 13(1) of the *Community Care and Assisted Living Act*. The cancellation of the licence was to be effective on May 5, 2006.

[2] From May 1 to 4, 2006, the Board received the parties' written submissions on the appellant's request for an order of the Board staying the cancellation of the licence pending the disposition of the appeal. The respondent requested an extension of time to file submissions regarding the stay application and consented to a one week stay until May 12, 2006 for that purpose.

[3] On May 4, 2006 the Board granted an interim stay order until Friday, May 12, 2006 in order to receive and deliberate on the further submissions of the parties.

[4] On May 9, 2006 the Board received a lengthy submission from the respondent that opposes the granting of a stay pending disposition of the appeal. The appellant has a further opportunity to respond to these submissions and provide anything further for the Board's consideration of the stay application on or before Thursday, May 11, 2006.

[5] The respondent Interior Health Authority opposes a stay pending disposition of the appeal on the ground that allowing the child care center to remain in operation poses an increased risk to the health or safety of children in care at the facility. The Interior Health Authority states:

Community Care Licensing is opposed to the granting of a protracted stay of the cancellation of the licence for [the child care facility]. The rationale for recommending to the Appeal Board that a protracted stay not be granted is discussed in the body of this letter and referenced in the attached exhibits.

Community Care Licensing has demonstrated that the licensee is either unable or unwilling to operate a community care facility in compliance with the Community Care & Assisted Living Act and pursuant Child Care Regulation. The concerns include but are not limited to:

- [the licensee's] refusal to accept responsibility for chronic non-compliance,
- Her efforts to deflect responsibility onto others, i.e. parents, licensing officer, Interior Health, City of Kimberly, School District #6,
- Her exercise of poor judgment and decision-making,
- [the licensee's] demonstrated inability to maintain health and safety of children in care.

Community Care Licensing's position is that, given the above, there are no terms or conditions that could reasonably be applied with any assurance of compliance. In several instances, perceived harm and/or established risk of harm to children in care has occurred through the licensee's own conduct or failure to act on acknowledged concerns.

...It is therefore, the opinion of Community Care licensing that the stay not be extended beyond May 12, 2006.

[6] The appellant is maintaining that the continued operation of the facility pending the disposition of her appeal does not put at risk the health or safety of children because all contraventions have been remedied and children are being cared for at above minimum standards. The appellant also intends to provide further submissions and evidence in support of her application for a stay by 1:00 pm on Thursday, May 11, 2006.

[7] Having regard to the history of the disciplinary action under appeal and the materials provided by the parties to date, the Board has considered and is satisfied that it would not risk the health or safety of a person in care to continue an interim stay of the decision to cancel the appellant's licence to operate a group child care facility until 9:00 pm on Friday, May 19, 2006.

[8] Under section 29(6) of the *Community Care and Assisted Living Act* and sections 15, 26(9) and 50(2) of the *Administrative Tribunals Act*, the Board orders that the cancellation decision under appeal is hereby stayed until 9:00 pm on Friday, May 19, 2006 or until further order of the Board.

[9] The Board will take the necessary time to consider the parties' submissions and issue its decision regarding the appellant's application for a stay pending disposition of the appeal as soon as possible.

May 11, 2006

Susan E. Ross, Chair