

## COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

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

**APPELLANT:** KR, Licensee  
(operating Happy Hearts Daycare)

**RESPONDENT:** Suzanne Sellin, Manager, Community Care Facilities Licensing,  
Fraser Health Authority

**PANEL:** Susan E. Ross, Chair

### **Decision on Requests to Vary and Clarify the Conditional Stay Order Issued on September 14, 2007**

[1] The appellant has applied to vary the terms of the Board's conditional stay order issued on September 14, 2007. The Board has reviewed the submissions of the appellant dated September 14, 17 and 20, 2007 and the Fraser Health Authority ("FHA") dated September 19, 2007. The Board is in substantial agreement with the FHA that the variation sought would significantly undermine the protective purposes of the conditional stay order as regards the health and safety of children in care during transport and care in public places, pending the determination of the merits of this appeal against the FHA's decision to cancel the facility licence.

[2] The appellant's request to vary the conditional stay order is therefore denied as the Board is not satisfied under section 29(6) of the *Community Care and Assisted Living Act* ("CCALA") that the variation would not risk the health and safety of children in care at Happy Hearts Daycare.

[3] In its September 19, 2007 submission the FHA also reported on an inspection of the facility that morning and requested the Board to clarify aspects of the conditional stay order. The appellant responded to these matters in her September 20, 2007 submission. The Board orders that the following clarifications and new conditions are to be attached to and incorporated into the condition stay order:

**Conditions a) and d):** "Qualified" refers to an adult who is qualified under the *Child Care Licensing Regulation* ("Regulation") for employment at Happy

Hearts Daycare in a capacity to transport and independently care for attending children (*i.e.*, medical clearance, criminal record check through the Criminal Record Review Agency, immunization status, first aid certificate and references). When children are "in care" at Happy Hearts Daycare within the meaning of the CCALA and the Regulation they must be cared for by qualified personnel. A parent of a child in care may not transport (by motor vehicle, on foot or by other means) or independently care for attending children at Happy Hearts Daycare, unless that parent is qualified for employment in that capacity under the Regulation.

Happy Hearts Daycare will not provide off-site transport (by motor vehicle, on foot or by other means) and care to attending children until:

- there is full compliance with Conditions a) and d); **and**
- the appellant has delivered confirmation of that compliance, in writing and signed by her, to the Board and to the FHA.

The appellant will make complete documentation establishing the qualifications of an alternate caregiver available to the FHA. (If the appellant has already done this, it would be appropriate for the FHA, if it has received material from the appellant, to acknowledge delivery and, given the current circumstances, if the FHA is cognizant of specific arising compliance concerns it would be appropriate to communicate those to the appellant.)

**Conditions a) and d):** If children in care are taken off-site to play at a park, their transport (by motor vehicle, on foot or by other means) must be provided by the alternate qualified adult, but the appellant may be present as well.

**Condition b):** The enrollments (6) as at September 13, 2007 may be maintained. No enrollments may be added or substituted.

**Condition i):** Notwithstanding that parents were told of or read the conditional stay order on location, Happy Hearts Daycare will not open for business on September 24, 2007 until:

- a responsible parent or guardian of each child in care has been provided with a photocopy of the conditional stay order and a photocopy of this decision; **and**
- the appellant has delivered confirmation that this has been done, in writing and signed by her, to the Board and to the FHA.

[4] The purpose of the conditional stay order is to permit the restricted continued operation of Happy Hearts Daycare pending an expedited hearing of this appeal. The appellant should not be under the expectation that the Board can or will consider requests for day-to-day exceptions to the restricted conditions of operation. The appellant is responsible for ensuring that Happy Hearts Daycare

operates in full compliance with the CCALA, the Regulation and the conditional stay order. If unable or unwilling to do this, the appellant must cease operating a community care facility.

[5] The Board Director will be contacting the parties shortly concerning scheduling this appeal for hearing on or before the end of October 2007. It should be in the interest of the appellant for the merits of the appeal to be heard and decided as soon as reasonably possible. The Board thanks the parties for their quick and thorough attention to the submissions they have provided to date.

September 21, 2007

Susan E. Ross, Chair