

## COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

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

**APPELLANT:** PC, Licensee  
(operating Wee Care Family Daycare)

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

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

### Variation of Conditional Stay Order Pending Disposition of Appeal

[1] On November 8, 2007, the Board issued a conditional stay order under section 29(6) of the *Community Care and Assisted Living Act* ("CCALA") and sections 15, 26(9) and 50(2) of the *Administrative Tribunals Act* ("ATA"). The Board ordered that the cancellation decision under appeal was stayed until February 15, 2008, the final disposition of the appeal or until further order of the Board, whichever comes sooner, on the following conditions:

- a) There will be no new or additional enrollments to Wee Care Family Daycare ("Daycare").
- b) The appellant will be absent from the Daycare when it is in operation only for the purpose of providing transport to children in care to and from the Daycare, their home, school or a recreational facility. A fully qualified substitute under the Child Care Licensing Regulation will be onsite at the Daycare whenever the appellant is off-site while it is operating.
- c) The appellant will fully cooperate with all continued monitoring by the Fraser Health Authority ("FHA").
- d) The appellant will comply strictly with this order and any existing conditions attached to the Daycare license.
- e) The appellant will ensure that the Daycare is in full compliance with the CCALA and the Child Care Licensing Regulation.

- f) The appellant will comply with all Board case management and scheduling requirements for the hearing of the appeal.

[2] On November 9, 2007, the Board received a further submission from FHA dated November 5, 2007, which stated as follows:

Upon reconsideration of [the appellant's] letter dated November 2, 2007 it appears reasonable that [the appellant] not be expected to be at the daycare 100% of the time. The file indicates that there was an agreement in principle that [the appellant] devotes 80% of her time to the daycare in her role as the primary care provider of a Family Childcare Facility. Fraser Health recommends strongly that this remain as a condition of the Stay.

Fraser Health also wishes to clarify that the intention was not that [the appellant] remain at the daycare site exclusively but that she devote a specific amount of time to the operation of her daycare. If this involves picking up and dropping off children at school or engaging in child related programming in the community this acceptable to Fraser Health.

In summary, Fraser Health continues to support a Stay of the Decision, should the Board consider granting a Stay with the following revised terms and conditions:

- 1) That [the appellant] operates Wee Care Family Daycare a minimum of 80% of the time that the daycare is in operation.
- 2) That [the appellant] uses a fully qualified substitute, as per the Child Care Licensing Regulation, for any absences from the facility.
- 3) That [the appellant's] absences from the facility are recorded and available for licensing review.
- 4) That there are no new child enrollments during the period of the stay.

[3] On November 23, 2007, the Board received a request from the FHA dated November 19, 2007, for clarification of condition b) of the stay order issued on November 8, 2007. FHA requested clarification of whether the appellant could use a substitute care provider for the purpose of absenting herself from the Daycare for personal reasons (such as personal recreation, errands, shopping, medical and like appointments, other interests or enterprises), noting that FHA has had past concerns regarding the amount of personal time the appellant spent away from the Daycare during its hours of operation.

[4] On November 26, 2007, the Board also received a FHA report of an inspection of the Daycare on November 23, 2007, which raised the issue of an emergency that necessitated the appellant's absence from the Daycare during its hours of operation.

[5] This subsequent material received by the Board was also provided to the appellant, who provided a further representation to the Board on November 28, 2007, in which she requested provision in the stay order for her to be absent from

the Daycare for an emergency, to attend a medical appointment and to take children in care on field trips such as such as visiting Santa and the library.

[6] The Board has considered all the further submissions. The Board recognizes that there may be operational reasons (such as transportation or field trips for children in care) for the appellant to be absent from the Daycare during its hours of operation. Noting that the Daycare operates 11 hours a day, 5 days a week, it is also, in the Board's view, not reasonable or necessary to expect or require the appellant never to be absent for personal reasons during its daily hours of operation or for illness or emergency circumstances. The Board therefore varies the conditions of the stay order as follows:

- a) There will be no new or additional enrollments at the Daycare.
- b) Subject to paragraph c) below, the appellant will be absent from the Daycare for personal reasons for a maximum of 25% of its daily hours of operation.
- c) The appellant may be absent from the Daycare for longer than 25% of its daily hours of operation if required by illness or by a specific operational or personal health or safety emergency.
- d) When the appellant is absent, she will have in place a fully qualified substitute under the Child Care Licensing Regulation.
- e) The appellant will make a daily record of her absences from the Daycare. The record will specify the duration of each absence and whether it is for operational or personal purposes. When the purpose of the absence is operational or is necessitated by an emergency, the record will note the specific operational activity or emergency involved. The appellant will produce the record for FHA examination on its demand.
- f) The appellant will fully cooperate with all continued monitoring by the FHA.
- g) The appellant will comply strictly with this order and any existing conditions attached to the Daycare license.
- h) The appellant will ensure that the Daycare is in full compliance with the CCALA and the Child Care Licensing Regulation.
- i) The appellant will comply with all Board case management and scheduling requirements for the hearing of the appeal.

[7] Section 29(6) of the CCALA provides that the Board may not stay or suspend a decision unless it is satisfied, on summary application, that doing so would not

risk the health or safety of a person in care. The Board is satisfied that the stay order as varied would not risk the health or safety of a person in care.

[8] The FHA may request the Board to vary or lift this order if it has reason to believe that the conditions of the stay are not being complied with in a material respect or that, on any new information, the continued operation of the Daycare pending the disposition of the appeal of the licence cancellation decision puts at risk the health or safety of a person in care at the facility.

[9] The Board reminds the parties that this order is limited to whether the licence cancellation decision should be stayed pending disposition of the appeal. It is not a determination or reflection on the merits of the appeal.

November 28, 2007

"Susan E. Ross"

Susan E. Ross, Chair