

## 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

### Decision Respecting Settlement of Appeal

[1] The appellant operates a licensed community care facility called Wee Care Family Daycare ("Daycare") in Chilliwack, British Columbia. In a reconsideration decision dated October 17, 2007, made under section 17 of the *Community Care and Assisted Living Act* ("CCALA"), the Fraser Health Authority ("FHA") confirmed the August 31, 2007 decision of its licensing officer to cancel the appellant's licence to operate the Daycare.

[2] The FHA's August 31, 2007 investigation report that underlay the licence cancellation decisions described compliance concerns over the previous five years in regard to:

- supervision of children in care and staffing qualifications;
- ages of children in care/number of children in care;
- manager's time away from the facility; and
- suitability of licensee and standards to be maintained.

[3] The appellant filed an appeal of the FHA reconsideration decision. On November 8, 2007, the Board issued a conditional stay of that decision pending the disposition of the appeal. Shortly after the terms and conditions of the stay were varied by a further Board order issued on November 28, 2007, the parties informed the Board of their intention to attempt to settle the appeal and the Board agreed to suspend setting the matter down for hearing in order to enable the parties to engage in settlement discussions.

[4] On January 11, 2008, the FHA wrote to the Board informing that the parties had reached an agreement regarding the withdrawal of the pending appeal on the basis of a set of proposed licence terms and conditions for the operation of the

Daycare over the next two years. The parties made a joint request under Rule 14 for the Board "to place these and/or any other conditions the Board feels necessary on the licence."

[5] Rule 14 of the Board Rules for Appeals under the CCALA reads as follows:

14(1) To withdraw all or part of an appeal, the appellant must deliver written notice of withdrawal to the Board. The appellant may do this at any time before the Board has made its final decision disposing of the appeal and the Board will order that the appeal or part of it is dismissed.

(2) To settle all or part of an appeal, the parties must deliver written notice of settlement to the Board. The notice of settlement may incorporate a request for the Board to make an order that includes terms of settlement to the extent that those terms are consistent with the *Community Care and Assisted Living Act*.

[6] Rule 14 reflects section 17 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, which governs the Board and reads as follows:

17(1) If an applicant withdraws all or part of an application or the parties advise the tribunal that they have reached a settlement of all or part of an application, the tribunal must order that the application or the part of it is dismissed.

(2) If the parties reach a settlement in respect of all or part of the subject matter of an application, on the request of the parties, the tribunal may make an order that includes the terms of settlement if it is satisfied that the order is consistent with its enabling Act.

(3) If the tribunal declines to make an order under subsection (2), it must provide the parties with reasons.

[7] The Board has considered the parties' request and would make an order that includes the proposed licence terms and conditions, subject to the following:

- Licence terms and conditions that are in terms of settlement which are included in a Board order under Rule 14 and section 17 of the *Administrative Tribunals Act*, are imposed by the FHA with the agreement of the appellant. The licence terms and conditions are not imposed by the Board and may not be brought to the Board for enforcement or otherwise, except to the extent that they are subject to future licensing action by the FHA that gives rise to a new appeal to the Board under section 29 of the CCALA.
- It is neither necessary nor appropriate to require the appellant to detail the purpose of her personal absences from the facility. It is sufficient for the personal attendance record in proposed condition e) to specify date, time and duration of the appellant's personal absences and identify the responsible substitute in each case. This may be accomplished by modifying proposed condition e) to refer to "the date *and duration* of the absence" and to delete the phrase: ", the purpose of the absence."

- The Board declines to approve a licensing term or condition suggested on page 2 of the FHA letter dated January 11, 2008, to the effect that, "a breach of any of the following conditions or further significant non-compliance with the regulation would result in cancellation of the daycare licence." Even if the parties agree and it is the FHA's reasonable expectation that the appellant will be responsible for ensuring full compliance with the CCALA and the *Child Care Licensing Regulation*, the FHA may not be excused from requirements in the CCALA regarding action against licenses or from applicable common law requirements of procedural fairness regarding any response it might make to the breach of licence terms or conditions or other non-compliance with the CCALA or the *Child Care Licensing Regulation*.
- It is not reasonable for the proposed licence terms and conditions to be of indefinite duration, with the intention that the FHA will re-visit their continuance in two years. The proposed terms and conditions should be imposed for two years, after which their continuance may be considered by the FHA and if it makes a decision in that regard that is adverse to the appellant, she may avail herself of the rights of appeal to the Board that are available under section 29 of the CCALA with respect to the attachment or variation of licence terms or conditions.

[8] The Board requests the parties to jointly communicate to the Board Director, in writing, by February 5, 2008 whether they wish to proceed with settlement of this appeal on the basis of the Board's inclusion in an order of the terms of settlement as described in this decision. Should either party not wish to proceed with settlement of this appeal on that basis, it will remain open for the appeal to proceed to hearing, for the parties to settle the matter on terms that are not included in an order of the Board, or for the appellant to withdraw the appeal unilaterally or as agreed between she and the FHA.

[9] The Board also wishes to commend the parties for their timely and productive efforts to resolve this appeal by agreement.

January 21, 2008

Susan E. Ross, Chair