

## COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

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

**APPELLANT:** MP, Licensee  
(operating Happy Smiles Daycare)

**RESPONDENT:** Richard S. Stanwick, Chief Medical Officer, Vancouver Island  
Health Authority

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

### Order on Application for Stay Pending Appeal

[1] The appellant operates a licensed community care facility called Happy Smiles Daycare in Victoria, British Columbia ("Daycare"). In a decision dated May 13, 2008, under section 17 of the *Community Care and Assisted Living Act* ("CCALA"), Dr. Richard Stanwick, the Chief Medical Officer for the Vancouver Island Health Authority ("VIHA"), confirmed his intention to cancel the appellant's licence to operate the Daycare. The decision to cancel the licence was made effective June 30, 2008.

[2] On June 12, 2008, the appellant filed an appeal to this Board of VIHA's decision to cancel the licence. She also requested the Board to make an order staying the licence cancellation until the completion of her appeal.

[3] The Board's authority to stay the cancellation decision and to attach terms or conditions to its order comes from sections 15, 26(9) and 50(2) of the *Administrative Tribunals Act* ("ATA") and section 29(6) of the CCALA. Sections 15, 26(9) and 50(2) of the ATA empower the Board (or the Board Chair or her delegate) to make interim orders and to attach terms or conditions on orders. 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.

[4] The Board has before it the following documentation: VIHA's February 12, 2008, investigation report (inclusive of Appendices 1 to 44); Dr. Stanwick's March 10, 2008, show cause letter disclosing his intention to cancel the licence; the appellant's April 10, 2008, response to the show cause letter, investigation report and appendices; Dr. Stanwick's May 13, 2008, decision to cancel the licence; the

appellant's notice of appeal and request for a stay of the decision under appeal; VIHA's response to the request for a stay; and, the appellant's reply dated June 25, 2008, and supporting documents.

[5] The Daycare has been licensed since March 2001. It has a current licensed capacity of up to 26 children. That limit is broken down into up to 16 children in group day care (30 months to school age) and up to 10 children in out-of-school care. Conditions on the license also prohibit the group and out-of-school programs from operating in the same space concurrently. The investigation report is focused mostly on events and conditions in the Daycare from January to August 2007, except for the transportation of children in care by a driver without a valid driver's license for which the incident reports and evidence of false driver's licence information go back to 2004.

[6] The appellant's grounds of appeal are that VIHA failed to give her a fair opportunity to respond to its concerns about the operation of the Daycare and that she will refute VIHA's reasons for canceling the licence. On the first point, the appellant intends to argue that she was unfairly disadvantaged because VIHA sought input from her about the tentative results of its investigation without informing her that the outcome of the investigation could have serious consequences for her licence to operate the Daycare. She also believes that Dr. Stanwick should have been willing to meet with her about the problems with the Daycare before he decided to cancel the licence. On the second point, the appellant intends to argue that her appeal should be allowed because problems with the operation of the Daycare have been corrected and the transport of children in care by an unlicensed driver was the result of the appellant having been misled by an employee (apparently the appellant's brother) about the status of his driver's licence and not because of any deceit or other wrongdoing on her part.

[7] Not all of the matters in the investigation report would necessarily warrant action against a licence. Some are very serious, however, and VIHA opposes the granting of a stay of its licence cancellation decision pending the completion of the appeal on the basis that Dr. Stanwick has no confidence in the appellant's ability to ensure the health and safety of children in care because she has repeatedly:

- failed to meet minimum requirements for minimum child-to-staff ratios;
- allowed children in care to be transported unsafely in a motor vehicle by an employee that did not have a valid driver's licence; and
- given misleading, false and contradictory information to VIHA's inquiries and investigations into the operation of the Daycare.

[8] Having considered the materials provided by the parties in respect of the appellant's stay application, the Board concludes as follows:

- VIHA has documented repeated contraventions in the operation of the Daycare, some of which directly connected to risk to the health and safety of children in care;

- VIHA's evidence and findings against the appellant also directly impugn the appellant's own honesty and integrity;
- the employee who transported children in care when he did not have a valid driver's licence and about whom false driver's licence information was provided to VIHA is no longer working at the Daycare;
- the appellant has taken recent steps to address gaps and concerns about staffing qualifications and child-to-staff ratios; and
- while the grounds of appeal do not appear strong, it cannot be said that there is no prospect of partial success on VIHA's adverse findings against the appellant or the licence cancellation penalty.

[9] The Board concludes that a short-term stay of the licence cancellation decision, with conditions, would not risk the health or safety of a person in care. Under sections 15, 26(9) and 50(2) of the ATA and section 29(6) of the CCALA, the Board orders that the decision under appeal is stayed until August 31, 2008, or further order of the Board, on the following conditions:

- a) There will be no new or additional enrollments to the Daycare.
- b) The appellant will fully cooperate with all continued monitoring by VIHA.
- c) The appellant will comply strictly with this order and any existing conditions attached to the Daycare licence.
- d) The appellant will ensure that the Daycare is in full compliance with the CCALA and the Child Care Licensing Regulation.
- e) The appellant will comply with all Board case management and scheduling requirements for the appeal to be heard before the end of August 2008.

[10] VIHA 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 cancellation decision puts at risk the health or safety of a person in care at the facility.

June 26, 2008

Susan E. Ross, Chair