

**COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD**

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

**APPELLANTS:** BG (for MG)  
  
and  
  
FS (for MC)

**RESPONDENTS:** Patricia Senko, Community Care Facilities Licensing  
Coordinator, Health Protection and Residential  
Development, Fraser Health Authority  
  
and  
  
Fraser Pacific Care Management Limited  
(operating as Valleyhaven Guest Home, an Adult  
Residential Care Facility)

**PANEL:** Susan E. Ross, Board Chair  
Gordon Armour, Member  
Judy Pollard, Member  
Sheila Ebenstiner, Member

**APPEARANCES:** BG For MG  
FS For MC  
Guy McDannold Counsel for Patricia Senko  
John Jansen For Valleyhaven Guest  
Home

## REASONS FOR DECISION ON APPEAL

### The Appeals

[1] The respondent Valleyhaven Guest Home (operated by Fraser Pacific Care Management Limited) ("Valleyhaven") is located in Chilliwack, BC. It is a community care facility, licensed as a residential care facility, under the *Community Care and Assisted Living Act*, SBC 2002, c. 75 (the "Act") with a permitted maximum capacity of 50 persons in care. The appellants filed separate appeals under s. 29(3)(b) of the Act on behalf of persons in care (an aged parent of each appellant) at Valleyhaven. The appeals relate to an exemption granted to Valleyhaven under s. 16 of the Act (the "Exemption"). They were heard together on July 7 and 8, 2008. At the conclusion of the hearing, the Board allowed the appeal and set aside the Exemption effective August 1, 2008, with reasons to follow. The Board also indicated that the parties would have liberty to apply concerning variation of the August 1, 2008, effective date of the Board's decision, should that be necessary.

### Statutory Provisions

[2] Section 16 of the Act reads as follows:

16(1) A medical health officer may grant an exemption from a requirement of this Act or the regulations to a licensee or an applicant for a licence who applies for the exemption, if satisfied that

- (a) there will be no increased risk to the health and safety of persons in care, and
- (b) the exemption meets prescribed requirements.

(2) A medical health officer may attach terms and conditions to the exemption and suspend, cancel or vary an exemption granted under subsection (1) in the same manner as under section 13 and 14.

[3] Valleyhaven applied for the Exemption in November 2007. It was preceded by a more limited exemption that was granted in May 2007 and by discussions with the respondent Patricia Senko concerning if and how Valleyhaven could continue to operate during the demolition and reconstruction of the facility. Ms. Senko granted the Exemption as a delegate of the Medical Health Officers of the Fraser Health Region. For convenience, she will be referred to as the "MHO" in this decision.

[4] These being appeals under s. 29 of the Act, the Board is required by s. 29(11) to receive evidence and argument as if its decision was one of first instance, but the appellants bear the burden of proving that the Exemption was

not justified. Under s. 29(12), the Board may confirm, reverse or vary the MHO's decision to grant the Exemption, or may send the matter back for reconsideration, with or without directions, to the MHO. Under s. 31.1, the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact, law and discretion arising or required to be determined in the appeals and to make any order permitted to be made.

[5] The Exemption relates to various requirements in ss. 5 to 5.23 of the *Adult Care Regulations*, BC Reg 536/80 (the "Regulations"). These provisions prescribe numerous minimum physical, equipment, care and comfort standards for community care facilities.

[6] Section 7(1)(b) of the Act and s. 12 of the Regulations are also relevant to this appeal. Section 7(1)(b) of the Act requires licensees (Valleyhaven) to "operate the community care facility in a manner that will promote the health, safety and dignity of persons in care". Section 12 of the Regulations reads as follows:

- 12(1) Section 5 to 5.23 do not apply to a community care facility if
- (a) the community care facility was licensed on or before August 1, 2000, and
  - (b) the community care facility was in operation on August 1, 2000.
- (2) Despite subsection (1), sections 5 to 5.23 apply to any structural renovations or additions to a community care facility, or any new facility constructed on the same property.

## **Background**

[7] Valleyhaven is a grandfathered facility under s. 12 of the Regulations. The majority of its residents are in wheelchairs and at the final stage of their lives. The original building (Wings 1, 3 and 4) was constructed in 1967. A south wing (Wing 2) with 26 more beds was added later. Because of its age Valleyhaven does not meet many of the requirements in ss. 5 to 5.23 of the Regulations; for example, most of the existing bedrooms are smaller than the minimum size requirements in the Regulations.

[8] Valleyhaven needs to be expanded to meet the demand for care in the community and it needs to be updated to meet or exceed the minimum physical standards in the Regulations. The owners looked at achieving these goals by renovating the existing buildings but decided this was not a feasible option. They also looked at ways of replacing the facility and settled on a plan to construct a new building on the site of Wings 1/2, while continuing to operate Wings 3/4. When Valleyhaven applied for the Exemption, Wing 2 was already empty and the licensed capacity of the facility had been downsized from 65 to

51 persons in care, all in preparation for staged demolition of the existing structure and construction of a new one. The objective was to close Wing 1 too and build a wall to block off Wings 3/4 (which would continue to operate) from the estimated 14 to 18 months of demolition and construction on the site of the closed wings.

[9] Section 12 of the Regulations relieved Valleyhaven of the requirements of ss. 5 to 5.23 of the Regulations as regards its existing structure, but not from the requirement in s. 7(1)(b) of the Act to operate in a manner that will promote the health, safety and dignity of persons in care. It also did not relieve Valleyhaven of the requirements in ss. 5 to 5.23 of the Regulations as regards the changes to the facility that would be necessary to continue the residential occupation of Wings 3/4, while Wings 1/2 were demolished and replaced. The plan was for Wings 3/4 to accommodate more residents during the construction period (50 in total) by establishing double occupancy in 17 existing single occupancy bedrooms and triple occupancy in 4 existing double occupancy bedrooms. Four existing single bedrooms occupied by private pay residents would stay that way and not be doubled up. The result would intensify Valleyhaven's non-conformity with ss. 5 to 5.23 of the Regulations in a number of ways (size of bedrooms, ratios of bathrooms and bathing facilities, ratios of single and double occupancy bedrooms, permitted number of persons in care in a bedroom,<sup>1</sup> etc.). Whether s. 12(1) of the Regulations applies only to the level of non-conformity that was in existence on August 1, 2000 (as ventured by counsel for the MHO) or s. 12(2) is triggered by the demolition and reconstruction of the facility while it remains in operation (as ventured by the Board), or both, Valleyhaven needed a further exemption under s. 16 of the Act to proceed as it planned.

[10] There is email correspondence between Valleyhaven and the MHO regarding the matter of consultation with the families of residents about the Exemption. On December 14, 2007, the MHO asked Valleyhaven whether the "family council" and "resident council" had been notified and when the family meeting was held to inform them about the expansion plans and impact on the residents. Valleyhaven responded that they did not plan to involve the families or residents until they had a clearer idea whether the proposal was going to be approved because Valleyhaven did not want to cause unrest unnecessarily.

[11] The formal application for the Exemption is dated December 17, 2007, and relates to s. 5(1)(a), (b), (c) and (d) (physical requirements), s. 5.1(4) and (5) (bedroom space requirements), s. 5.7(a), (b), (c) and (d) (bathroom and

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<sup>1</sup> Section 5(1)(a) of the Regulations requires bedrooms to be designed, constructed and maintained as single or double occupancy. Section 5(1)(b) and (c) require single and double occupancy bedrooms to accommodate no more than one or two persons in care, respectively. Section 5(1)(d) limits the number of double occupancy bedrooms to 5% of the facility's maximum licensed capacity. There is no provision in the Regulations for triple occupancy.

bathing facilities) and s. 5.8(1) and (2) (bathrooms and bathing facilities) of the Regulation. The application included the following passage about notification of residents and their families:

Once Valleyhaven has been granted an exemption, the persons named [in s. 29(3) of the Act] will be notified by mail of the decision. They will also be informed of their rights to appeal under Section 29(3) of the CC&ALA. As part of our plan for the redevelopment of Valleyhaven, residents and their significant others will be involved and consulted during all phases of the process. Two-way dialogue and effective communication with residents and families is vital for the success of the redevelopment plan, as well as ensuring the Residents safety and well being is fully considered.

[12] Dialogue with and various information requests from the MHO followed. In one response, dated January 16, 2008, Valleyhaven advised that the available space in its existing single occupancy bedrooms (to be converted into double occupancy) measured 14.0 square metres and its existing double bedrooms (to be converted into triple occupancy) measured 19.2 square metres.<sup>2</sup> This response by Valleyhaven also provided additional information in other areas that included: installation of privacy curtains, bathing and recreation/socialization plans, room numbers and floor plans. The MHO circulated the proposed Exemption to the Residential Services branch of the Fraser Health Authority to determine whether they supported the Exemption during the demolition and reconstruction of Valleyhaven, but did not notify and receive input from the residents or their families, directly or by requiring Valleyhaven to conduct such consultation before a decision was made to grant the Exemption.

[13] The Exemption issued on February 18, 2008, to take effect on March 17, 2008. The issue date was then revised to March 3, 2008, with a view to respecting the right of appeal of residents or their families on their behalf under s. 29(3) of the Act, as the families were not informed of the Exemption until a meeting held on March 12, 2008, to provide an update on the redevelopment plans for Valleyhaven.

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<sup>2</sup> Section 5.1(1) of the Regulations requires a single occupancy bedroom accommodating a person in care who does not require a mobility aid (wheelchair, walker, etc.) to have usable floor area of not less than 8 square metres. Section 5.1(2) requires a single occupancy bedroom accommodating a person in care who does require a mobility aid to have usable floor space of not less than 11 square metres. Section 5.1(3) requires a double occupancy bedroom accommodating persons in care who do not require a mobility aid to have usable floor area of not less than 14 square metres. Section 5.1(4) requires a double occupancy bedroom accommodating persons in care who do require a mobility aid to have usable floor area of not less than 18 square metres. Section 5.1, in all cases, requires "usable" floor area to be exclusive of the entranceway or swing of the entrance door, clothes closets, armoires, built in cabinets or ensuite washroom.

[14] The Exemption grants Valleyhaven an exemption from s. 5(1)(a), (b), (c) and (d) (physical requirements), s. 5.1(4) and (5) (bedroom space requirements), s. 5.2(1) (bedroom furnishings) and s. 5.8(1)(a), (b), (c) and (d), (2) and (3) (bathrooms and bathing facilities) of the Regulations. The accompanying cover letter states that the exemption is approved on a temporary basis until construction of the new building is completed, which is understood to take approximately 18 to 24 months, and licensed under the Act. The Exemption states that it has no conditions attached, however it does list a series of health and safety considerations that the MHO took into account and the cover letter does request Valleyhaven to contact the MHO should it decide to change "the agreed on conditions" or is unable to meet the health and safety considerations outlined in the Exemption. It also states that approval of the Exemption is subject to ongoing review and cancellation if it results in the needs of any person in care not being met or in an increase in risk to the health and safety of a person in care.

[15] The Health and Safety Considerations in the Exemption include the following passage:

The management plan is to inform the families and persons in care of the plan to re-build and redevelop Valleyhaven Guest Home, once the exemptions are approved. This plan is to prevent unnecessary concern for the persons in care or family members. The Residential Care Coordinator (Fraser Health) has been informed of the plans to redevelop and will be involved with the families and persons in care to assist them if they chose not to reside in a double or triple occupancy room, and request to be transferred to another facility. Management does plan to provide an overview of how the persons in care will be affected during the construction phases.

[16] The Supporting Rationale and Extenuating Circumstances heading in the Exemption reads as follows:

Ms. Donna Muir, Planning & Development, Geriatric & Residential Supported Living Services is in support of this exemption request to enable this residential care facility to proceed with their development plans, while continuing to support persons in care during the construction.

The Licensee of Valleyhaven Guest Home was successful in negotiating with Residential Services to expand their services. Fraser Health is in support of the plans to expand their services.

In order to enable the Licensee of Valleyhaven Guest Home to proceed with their expansion and construction they require some temporary exemptions to the Adult Care Regulations as listed above in order to maintain the persons in care currently residing at Valleyhaven Guest Home.

## Position of the Appellants

[17] Mr. G appeals on behalf of his mother, MG, a 93 year-old resident of Valleyhaven who requires a mobility aid. She was among the residents who were moved from Wing 2 in 2007 and currently lives in a single occupancy bedroom in Wings 3/4 that Valleyhaven intends to continue to operate, with the benefit of the Exemption, while Wings 1/2 are demolished and a new building is constructed. The Exemption permits Valleyhaven to implement double occupancy in MG's single occupancy bedroom. This will mean tighter quarters, 4 instead of 2 persons in care for the washroom, the necessity to remove MG's glassed cabinet containing mementos of her life and family, and for her to share the single closet in the room with another resident.

[18] Mr. G's main grounds and arguments for appealing the Exemption are summarized as follows:

- Fire safety will be compromised by the storage of wheelchairs and walkers in the corridors at night because there will be no room for them in multiple occupancy bedrooms allowed by the Exemption.
- Fire safety will also be compromised because evacuation of residents will be more difficult due to the close living quarters permitted by the Exemption.
- Section 16 of the Act was intended to permit minor exemptions from the minimum requirements in ss. 5 to 5. 23 of the Regulations, not the drastic level of non-compliance that will result from the Exemption.
- A double occupancy bedroom will expose MG to greater risk of infectious disease, especially in an already undersized single occupancy size bedroom that will now be occupied by two persons in care. The close quarters will also compromise her privacy and dignity.
- In the Spring of 2007 Valleyhaven informed the families of its residents of a very different plan for the renewal of the facility, which was the basis on which MG was moved from Wing 2 to a single bedroom in Wings 3/4 where she would continue on a single occupancy basis. Families were not informed or consulted about the application for the Exemption and knew nothing about the double and triple occupancy it entailed until after the Exemption was granted by the MHO.
- MG's existing single occupancy bedroom (which would become double occupancy under the Exemption) has 9.5 square metres of usable floor area, not the measurement of 14.0 square metres indicated in Valleyhaven's information in support of the Exemption and the Exemption itself. This is too much below the minimum 18.0 square metres of usable floor space that s. 5.1(4) of the Regulations requires for a double occupancy bedroom accommodating persons in care who require a mobility aid, not to present risk to MG's health, safety and dignity.
- It is all very well to look forward to the replacement of the existing facility with a new, larger and compliant facility in 18 or 24 months, but this is a

long period of time for MG, given her age and state of health. She may not live to benefit or benefit much from the new facility and the Exemption should not be permitted to compromise her health and safety, even hasten her death, for what could be the remaining months of her life.

- Because the pace of construction cannot be accurately predicted (for example, for contingencies such as the discovery of asbestos in the demolished buildings that requires special procedures for safe disposal) the new facility may not be completed in 24 months. This would even further compromise MG's health and safety.
- The scope of the Exemption requires no single occupancy bedroom(s) to be reserved for palliative care of public pay persons in care, with the result that ailing residents will pass away in a shared bedroom accommodation. This introduces hardship and psychological stress for all occupants of the shared bedroom, which Mrs. G is not exposed to now.
- Mr. G has no wish to move his mother from Valleyhaven, where she is comfortable and has been cared for well.

[19] Ms. S appeals on behalf her mother, MC, a frail 90 year-old resident of Valleyhaven who also requires a mobility aid. She essentially concurs with and echoes Mr. G's grounds of appeal and submissions.

[20] MC was a person in care at Valleyhaven when Mrs. S filed her appeal and her statement of points, but at the beginning of the hearing she informed the Board that she had very recently moved her mother to a new facility. Apparently the opportunity arose suddenly and, with the outcome of the appeal being uncertain, Mrs. S decided she had to accept the move in her mother's best interest. This raises the question of whether Mrs. S still has a live appeal. It is an academic question to the degree that, even if Mrs. S could no longer pursue her appeal because the person she represents is no longer a person in care at Valleyhaven, we still have Mr. G's appeal on behalf of his mother who remains at Valleyhaven. We found Mrs. S's contribution of some value. If necessary, we would receive her evidence as having been tendered in support of Mr. G's appeal. And, if necessary, we would allow Mrs. S's appeal to stand and continue in its own right, because it has been brought and pursued in complete good faith, the decision she took to move her mother is entirely understandable in the circumstances, and an excessively strict application of the doctrine of mootness (under which matters that have become academic in their outcome are not adjudicated) could make it all but impossible for issues of the kind raised in these cases to proceed to adjudication on appeal.

[21] Mr. G and Ms. S are both clear that they are not critical of or concerned about the quality of care their mothers have received at Valleyhaven. By all accounts, the appellants are comfortable with and have every confidence in Valleyhaven staff, their professionalism and compassion and the manner in which the facility has been operated. There was no evidence in the Licensing

Record to suggest that Valleyhaven had a history of compliance problems. On the contrary, the appellants have high praise for the care at Valleyhaven and they are supportive, in the big picture, of the need to replacing the aging buildings with a new and larger facility at the lovely Valleyhaven site, which the Board and parties conducted a site visit to as part of the hearing.

### **Position of the Respondents**

[22] Valleyhaven maintains that it has put in place or agreed to assure all necessary requirements for the health and safety of persons in care at Valleyhaven. This includes the requirements of fire safety officials, infection control measures for infectious diseases, privacy measures, a bathing plan, and a recreation/socialization plan to get residents out of their bedrooms as much as possible. If the Exemption stands, Valleyhaven intends to convert a sunroom in the dining area that is currently used as a dining space for higher cognitive function residents, or the administrator's office, into a palliative care room. The physical conditions permitted by the Exemption are not ideal. Dignity, however, is much more than the size of one's bedroom. Valleyhaven has an excellent record for the quality of care it provides and will not be compromising the health, safety or dignity of its residents. Valleyhaven cannot keep on its staff and operate viably at a lower capacity than the Exemption permits. If the facility cannot continue to operate at a viable level during construction, the owners' plans to replace Valleyhaven will not proceed and the existing facility will likely be decommissioned in approximately 18 months.

[23] The MHO's main positions are summarized as follows:

- Section 16 of the Act must be interpreted to mean what it says: that, except for the prescribed provisions for which the MHO is prohibited from issuing an exemption (none of which are present here), the Act authorizes an MHO to exempt a licensee from any requirement of the Act or regulations. The double and triple occupancy bedroom accommodations permitted by the Exemption will result in inconvenience and disruption, and some family and resident wishes may not be met for a time. Conditions will not be ideal. However, as real as these issues are, they are not the test in s. 16 of the Act for granting an exemption.
- Medical health officers and their delegates are highly experienced in what they do and respect should be given to the fact that the MHO exercised her considered judgment in deciding to grant the Exemption.
- The appeals must be dismissed because the appellants provided no evidence to meet their burden under s. 29(11) to prove that the Exemption is not justified.
- There has been an undue focus on room measurements and the degree to which the size of the double and triple occupancy bedrooms allowed by the Exemption fall below the minimum standards in the Regulations. The bedroom size calculations in the Regulations did not enter into the MHO's

considerations because Valleyhaven is a grandfathered facility that already does not meet the current Regulations. Risk to health and safety was not an arithmetic calculation. The key was looking more at the functional space; whether the bedroom would be workable and safe for staff to provide care to the residents by having enough space to manoeuvre wheelchairs, walkers and ceiling lift equipment.

- Following an outcome based compliance model, the MHO was satisfied by Valleyhaven's commitments (such as not doubling-up an aggressive resident with a vulnerable resident) and plans (for bathing and recreation/socialization) that the requested Exemption would result in no increased risk to the health and safety of persons in care.
- Matters such as fire safety and infectious disease control were considered. The fire inspector was consulted and satisfied; FHA has comprehensive protocols for infectious disease control that would continue to apply at Valleyhaven.

## **Discussion and Analysis**

[24] In our view, the words used in s. 16 of the Act – no increased risk to the health and safety of persons in care – set an obviously high test for the granting of an exemption. Mr. G may not be wholly correct in suggesting that s. 16 was intended to authorize only minor non-conformities. Its wording does seem too broad for that. However, when an exemption is as extensive as the Exemption under appeal, the requirement for the MHO to be satisfied that there will be no increased risk to health and safety of persons in care necessitates a level of searching, and balanced examination of the matter that is commensurate with the seriousness of the relaxation from minimum standards that is involved.

[25] It is true that the appellant's burden of proof under s. 29(11) of the Act to establish that the decision under appeal is not justified may be discharged, depending on the complexion of the appeal, by further factual evidence or with expert evidence. It may also be discharged by establishing that the decision under appeal is premised on fallacious internal reasoning, or a wrong interpretation of the Act or Regulations, or a failure to consider relevant factors, principles or evidence that is disclosed in the record of the decision under appeal, or a breach of fairness, and so on. We are satisfied that the appellants have discharged their burden of proof under s. 29(11). In explaining our reasons for allowing the appeals, it is unnecessary to exhaustively analyze the grounds of appeal, issues that were touched upon by the parties or flaws that we perceived in the Licensing Record.

[26] The appellants' concerns respecting fire safety, while sincere, were not born out by the documentation in the Licensing Record or the testimony of the MHO about the consultations with fire safety officials. We would not allow the appeals on that basis.

[27] A residential care facility is the home of the persons in care who live there and one purpose of ss. 5 to 5.23 of the Regulations is to ensure that the health, safety and dignity of persons in care is promoted in a manner that embraces the fact that the facility is their home. Social space and social activity is important; so is private space and privacy. The usable space requirements for bedrooms in s. 5.1 of the Regulations exist to ensure space functionality for the care of residents, which is obviously necessary for the health and safety of residents and staff. They also exist to enable persons in care to, as much as possible in their circumstances, enjoy the physical and psychological attributes of a home.

[28] The application for the Exemption was presented on the basis of the size of the footprint of the affected bedrooms (measured by the interior walls, including the entranceway or swing of the entrance door, the clothes closet, armoires, 1/2 the ensuite washroom allocated to each shared bedroom). Those measurements were not "usable space", which, for planned new double occupancy bedrooms was between 9.5 (Mr. G's calculation from the architectural drawings) to 11 square metres (the calculation of counsel for the MHO), instead of the 14.0 square metres indicated on the application and the Exemption. The 14.0 square metres figure was itself significantly under the minimum 18.0 square metres required by the Regulations for a double occupancy room for residents requiring a mobility aid.

[29] The MHO erred in not taking the requirements in ss. 5.0 to 5.23 of the Regulations to be the point of reference for whether to grant the Exemption. The minimum requirements in the Regulations are the point reference for any exemption from those requirements. This is so whether the existing facility, before planned structural changes, conforms to the Regulations or it is already non-conforming as is the case for Valleyhaven. This significant error was amplified by the MHO's specific failure to consider the matter on the basis of the "usable floor area" requirements of s. 5.1 of the Regulations. That error involved the MHO incorporating Valleyhaven's bare footprint measurements into the Exemption and equating "usable" with functional for staff to operate a lift and a single mobility aid in and out of the room. The MHO looked to whether Valleyhaven's objective of operating a 50-bed facility in Wings 3/4 was "doable", rather than on the applicable, and very high, standard of "no increased risk to the health and safety of persons in care" that is in s. 16 of the Act. This involved the MHO seeing usable floor area in the bedrooms in terms of functionality for staff (i.e., a six foot radius to turn a single wheelchair in each double room, which necessitated the removal of armoires). Consideration of the size of the bedrooms in terms of usable space for the residents (i.e., for an armoire, for sitting in a wheelchair or arm chair, for having a visit from family, for the enhancement of their privacy when receiving personal care) was re-focused on the adequacy of dining, activity or lounge common areas.

[30] Another significant error was that, while the MHO required Valleyhaven to bring forward information or approval from others and she herself sought out opinions of the fire inspector and the Geriatric Residential Supported Living Services branch of the Fraser Health Authority (a so-called stakeholder in the Exemption), she failed to take into consideration information from the residents or their families. By not requiring Valleyhaven to notify residents and families, or the resident council at the least, about the application for the Exemption, Valleyhaven was relieved of providing any information (letters of support or concerns about increased risk to the health and safety of person in care) from that constituency. Given that the nature and scale of the Exemption made it specific and significant in its effect on each person in care, with the possible exception of the four private pay residents who would remain in their existing bedroom accommodations, the residents' perspective on increased risk to their health or safety – as formulated by them or their family or family council representatives – was a relevant consideration that the MHO should have required Valleyhaven to bring to the table in connection with its application.

[31] In answer to inquiry from the Board on this issue, counsel for the MHO suggested that if there was a notification problem, it was that Valleyhaven notified residents and families about impending changes too soon (in the Spring of 2007) and not too late (after the Exemption was granted). The Board does not agree. Valleyhaven was correct to communicate to the families that preparation for the demolition and reconstruction of the facility was underway. Indeed, that was when Wing 2 was decommissioned and MG was moved from there to Wings 3/4. The plans and their implementation changed significantly, as such matters may do, between the meeting with the families in March and the application for the Exemption in December, 2007. Then, because the residents, families or resident council were not required to be informed or consulted about the application for the Exemption, the MHO was without that relevant information input when she made her decision under s. 16 of the Act. This was a serious decision-making flaw for the Exemption.

[32] It is not necessary for the Board to decide other issues raised on these appeals. We specifically make no comment on the viability of the Valleyhaven owners' business plans for the continued operation and replacement of the facility, on the availability of beds in other facilities in the Fraser Health Region, or on the conditions in other facilities, some or all of which may be hospitals that are not covered by the Act and Regulations. These matters were referred to in the Licensing Record and the parties' submissions, but they were not proven in evidence or before us for decision on these appeals.

## **Conclusion**

[33] After considering the evidence and submissions before the Board, whether or not specifically referred to here, the Board concluded, for the reasons given, that the appellants established that the MHO's decision to grant

the Exemption to Valleyhaven was not justified. The Board allowed the appeals and set aside the Exemption effective August 1, 2008. The respondents may apply to the Board to vary this effective date, should that be operationally necessary.

[34] The Board thanks all the parties for their most helpful and sincere contributions to the hearing of these appeals.

July 21, 2008

Susan E. Ross, Board Chair

Gordon Armour, Member

Judy Pollard, Member

Sheila Ebenstiner, Member