

## COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

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

- APPELLANT:** TF (the Appellant)
- RESPONDENT:** Chief Medical Health Officer, Northern Health Authority
- PANEL:** Marcia McNeil, Vice Chair  
Gayle Davies, Member  
Mary-Ann Pfeifer, Member
- APPEARANCES:** Robert Frederick, on behalf of the Appellant  
Troy deSouza, counsel for the Respondent

### DECISION

#### INTRODUCTION

[1] The Appellant appeals the November 3, 2009 decision by the Respondent, Chief Medical Health Officer ("MHO") of the Northern Health Authority ("NHA"), dismissing her application to reconsider his decision to deny her application for a licence under the *Community Care and Assisted Living Act* (the "*Act*") to operate a facility known as Mountain View Preschool.

[2] As noted by counsel for the MHO in his opening statement, this case requires our determination of two issues, namely:

- a. Did the Appellant deliberately send to the licensing officer handling her licensing application, an altered copy of her first aid certificate;
- b. If the Appellant did alter the copy of her first aid certificate, is that a sufficient ground to deny her a licence under the *Act*?

[3] The MHO's original decision finding that the Appellant was ineligible for a licence refers to s. 11 (2) of the *Act*, which provides (in part):

#### **Powers of medical health officer**

**11** (1) Subject to this Act and the regulations, a medical health officer may issue to an applicant a licence to operate a

community care facility and specify in the licence the types of care that may be provided in the community care facility.

(2) A medical health officer must not issue a licence under subsection (1) unless the medical health officer is of the opinion that the applicant,

- a) if a person, other than a corporation,
  - (i) is of good character,
  - (ii) has the training, experience and other qualifications required under the regulations,
  - (iii) has the personality, ability and temperament necessary to operate a community care facility in a manner that will maintain the spirit, dignity and individuality of the persons being cared for, . . .

[4] Neither the MHO's original decision dated September 28, 2009, nor the reconsideration decision under appeal provide any reasons for his decision. Instead, the MHO's decisions refer to the investigation report prepared by Ms. TA, a licensing officer, together with the Appellant's written response, and conclude that the Appellant is ineligible for a licence.

[5] Ms. TA's investigation report included the following narrative:

On September 8, 2009, the Applicant, [the Appellant] faxed in a copy of her first aid certificate, along with other documents required by the application process, to her licensing officer, [Ms. ST]. The first aid certificate that was sent via fax had expired on May 27, 2009. The licensing officer called [the Appellant] to let her know that some of the documents didn't come through, and that she had sent in an expired first aid certificate. [The Appellant] stated she would fax a copy of the new one when she got home. The licensing officer informed [the Appellant] that she would issue the licence in the morning, when she had received all of the outstanding documents.

On September 9, 2009, we received a fax from [the Appellant] at Sowchea Elementary School that contained the remainder of the outstanding documents. Amongst the paperwork was a copy of another first aid certificate bearing [the Appellant's] name that contained the same class number and reference number of the expired certificate. The expiry date of May 20, 2012 on the new certificate and contained two different fonts and appeared to have been deliberately altered. ...

[6] The report then set out the steps taken during the investigation, and drew the following conclusions:

- When asked about the expired certificate, [the Appellant] told her licensing officer that she would send a new certificate when she got home. [The Appellant] did not attend a first aid course to renew her certification until September 12, 2009, and therefore; would not have been able to send an up to date certificate when requested by the licensing officer.
- The fax came from [the Appellant's] facility with other documents intended for her licensing file.
- [The Appellant] admitted to sending the batch of documents by fax on September 9, 2009, at 7:58 am.
- No one stands to gain from falsifying the first aid certificate other than [the Appellant].
- To date, [the Appellant] has not provided a plausible explanation.
- [The Appellant] fails to see the correlation between this incident and how it speaks to her suitability.

[7] Based on these findings, the licensing officer recommended that the Appellant be refused a licence to operate a preschool.

### **APPELLANT'S POSITION AND EVIDENCE**

[8] In her application for reconsideration of the MHO's decision of September 28, 2009, and in the hearing before this Panel, the Appellant acknowledged that the first aid certificate sent to the Community Care Licensing Office on September 9, 2009, was altered to show an expiration date of May 20, 2012, but asserted that she did not make the alteration. She also asserted that she had no reason to alter the certificate as she had made arrangements in August to take the first available first aid course, which was scheduled for September 12, 2009, and that it was not necessary that she have a license as she had an employee who was certified.

[9] The Appellant also noted that when the licensing officer attended at the preschool on September 17, 2009, she examined the original St. John's Ambulance certificate which was not altered, and which had an expiry date of May 20, 2009. The Appellant asserted she had no reason to alter the certificate, and noted in her written submissions, "I can only presume that this was an act of sabotage by unknown persons who have attempted to discredit me or my business."

[10] In the hearing before this Panel, the Appellant presented a number of witnesses who testified to her good character. Prior to seeking the licence to open the preschool, the Appellant had worked at a pharmacy in her community, and had operated a licensed family daycare for a period of approximately three years, during which no serious issues arose with the NHA regarding her ability to safely operate a family daycare.

[11] One of the witnesses called by the Appellant was Mr. KM, the Principal of Sowchea Elementary School, the building in which the preschool operates. KM testified that he would not have been willing to permit the Appellant to operate the preschool on the elementary school's premises if he was not completely satisfied with her good character. He also testified that any issue about having a valid first aid certificate could have been easily resolved, as he holds advanced first aid training and certification. However, in the course of Mr. KM's evidence, it was apparent that he had not previously been aware that the issue of concern to the NHA was whether the Appellant had sent a falsified first aid certificate to the licensing office to attempt to portray that she had a valid first aid certificate.

[12] The Appellant testified that she formed the idea to purchase the preschool in the spring of 2009 when the former licensee decided to leave town and sell the preschool operation. She soon realized that there were more administrative requirements to operating a licensed preschool than she had experienced as a licensed family daycare operator. She testified that she met with the licensing officers in late August, and began the process of putting together the paperwork with the expectation that the preschool would be licensed to operate by the beginning of the school year, on September 9, 2009. She was aware that her first aid certificate had expired, and had made efforts in August to take the next available first aid course, which was not until September 12, 2009. Although this meant that she anticipated operating the facility for a few days after it opened without a valid first aid certificate, one of her employees held a valid first aid certificate, which met the requirements of the *Act*. In her testimony, she could not recall whether she had ever discussed this with any of the licensing officers, although she thought that it might have come up.

[13] The Appellant had anticipated that a licensing officer would come to the site on September 3, 2009, however when that meeting was cancelled, arrangements were made for her to fax the final necessary documentation to the licensing office. She was assured by the licensing officer that if all of the paperwork was in order, a licence would be issued within 24 hours of its receipt. The Appellant admitted that she was under some stress at this time, due to the administrative requirements, and the preparations for the impending opening of the preschool on September 9, 2009. She recognized that she was not as organized as she thought with respect to the administrative requirements to obtain a licence.

[14] When she sent her expired first aid certificate to the licensing office on September 8, 2009, she did so as a mistake, as she scooped up a number of papers and mistakenly included the first aid certificate. Her intent had been to wait until she received a new certificate on September 12, 2009, and send a valid certificate to the licensing office. She acknowledged receiving a call from Ms. ST, advising her that her first aid certificate had expired. She agreed that she would send a new first aid certificate.

[15] With respect to the certificate sent on September 9, the Appellant testified that she didn't believe that she sent the certificate a second time. She testified that she didn't know what happened, but that she didn't think that she would have sent the certificate a second time.

[16] The Appellant testified that when the licensing officer told her that the first aid certificate sent on September 9 appeared to have been altered, she did not have an altered certificate in her possession, and it didn't make sense.

[17] In cross-examination, the Appellant admitted that she had included a handwritten cover sheet with each of the faxes that she sent to the licensing office on September 8, and September 9, 2009. The cover sheet confirmed the number of total pages in the fax. The fax sent on September 8, 2009 noted that it contained "4 pages total" and the fax on September 9, 2009 noted that it contained "Pages total 7." In each case, the last page in the fax was the certificate. When asked if she admitted that she sent the certificates with each of the faxes, she responded that she didn't believe that there was proof that she sent the altered certificate, that she may have only sent six pages, and that she was under the impression that licensing wanted a medical clearance form.

[18] In her submissions, the Appellant's position was that she did not know who altered the first aid certificate, but she continued to assert that she did not do so. She argued there was no basis for the assertion that she was not of good character, and therefore no basis to justify the refusal to grant her a license.

## **RESPONDENT'S POSITION AND EVIDENCE**

[19] ST is a licensing officer with the NHA. She testified that she received a fax on September 8, 2009, from the Appellant, which contained the expired first aid certificate. She contacted the Appellant and informed her that the first aid certificate had expired. She testified that the Appellant replied that she would send another first aid certificate when she got home.

[20] ST also testified that she received the seven page fax on September 9, 2009, which contained the altered first aid certificate. As a result, she attempted to contact the Appellant, but was unable to speak to her until September 10, 2009. On that date, she advised the Appellant that there was

a problem with her first aid certificate as it appeared to be altered. The Appellant said she did not know where the altered certificate had come from, and that she didn't mean to send a first aid certificate. She replied that she thought licensing had requested a medical clearance form, but that the clearance form had been provided on August 26, 2009. ST pointed out that neither of the two faxes sent by the Appellant contained the medical clearance forms, and she confirmed that in fact, that form had been received by licensing in August. Ms. ST advised the Appellant that she would not issue the licence at that time.

[21] In cross-examination, ST was questioned about the number of people that handle paperwork, or are able to handle paperwork received by the Community Licensing Office. She admitted that it was possible for one of the staff members within the Licensing Office to have altered the fax, but that she found it highly unlikely as there was no reason for anyone to do so.

[22] Another licensing officer, TA, was also involved in the investigation while ST was on vacation. In the course of her discussions with the Appellant, the Appellant again asserted that she thought that licensing had wanted her to send a copy of her medical clearance, but that she had already done so on August 26, 2009. She again asserted that she didn't know how the certificate had been altered, and that she didn't do it. TA also asked the Appellant if she had given a copy of the certificate to anyone, and the Appellant responded that she had not, and that she usually stored it in a cupboard at the preschool.

[23] The Regional Manager of Community Care Licensing, Ms. L, also testified that in discussions with her licensing officers, they had come to the conclusion that the Appellant must have knowingly altered the first aid certificate to the licensing officers to attempt to demonstrate compliance with the legislation so that a licence would be issued. She testified that the geographical area canvassed by the Northern Health Region is very large, and that it is very difficult to supervise the facilities within the jurisdiction of the NHA. She also confirmed that staff have a large caseload, and as a result, they must have complete trust in the licensees. She indicated that they try to work to resolve issues with licensees when they arise, but that issues of trust and character are not easily resolved. She identified that her specific concern was that if the Appellant was willing to be untruthful on an issue such as the first aid certificate, which could have been resolved cooperatively with the licensing office, they could not have assurance that she would also be truthful when other more serious issues might arise.

[24] In closing argument, the Respondent took the position that the evidence demonstrated that the Appellant deliberately forwarded an altered document to licensing in order to facilitate the granting of a license in a short time frame so that she could open the preschool coincident with the opening of the elementary school.

[25] Counsel for the MHO argued that the handwritten fax sheets confirming the number of pages contained in the fax demonstrates that the Appellant was aware on each of the two occasions that the original certificate and the altered certificate were sent, that the document was enclosed in the package she was forwarding. Further, as neither package included a medical clearance form, her explanation that she thought she was being asked to send a medical clearance form did not make sense.

[26] The Appellant had been given numerous occasions, including the hearing of this matter, to admit that she had knowingly sent the altered document to the licensing officers, and in so doing, would have made steps to regain the trust of the licensing officers. Having failed to do so, counsel for the MHO argued that the Appellant's actions in both knowingly forwarding an altered document, and maintaining an untruthful position with respect to the altered document throughout the investigation and hearing, demonstrates that she is not of good character as required by the *Act*.

## **REASONS**

### Did the Appellant knowingly send an altered document?

[27] Based on the evidence presented in the hearing, we conclude that on the balance of probabilities, it is more likely than not that the Appellant knowingly sent an altered document to licensing, in order to facilitate the expeditious granting of a licence.

[28] We make this finding for several reasons:

- a) The cover page of the fax sent by the Appellant on September 8, 2009 correctly confirms that it contains four pages, including the cover page. We do not accept the Appellant's explanation that she did not intend to send the first aid certificate in the first package of documents she faxed.
- b) Ms. ST testified, and we accept, that she contacted the Appellant on September 8, 2009 to advise that the first aid certificate that the Appellant had sent had expired. The Appellant acknowledges this evidence, and admits she responded that she would send a new one. In light of this admission, we also do not find it likely that the Appellant would have formed the mistaken impression that ST was asking her to produce a medical clearance certificate.
- c) The Appellant's testimony that she agreed to send a new first aid certificate to ST on September 9 is inconsistent with her assertion that the altered first aid certificate was included by mistake in the second fax submission.

- d) The September 9 fax cover sheet correctly confirms that including the cover page, it contained seven pages. We do not accept the Appellant's evidence that she did not realize that the certificate was included in the package of material that she faxed to the licensing office.
- e) Finally, we accept that in the absence of any evidence to the contrary, it is most likely that the Appellant herself altered the certificate rather than some other person intending to "sabotage" her application. The Appellant provided no evidence to support that there was any person who would have been inclined to, or wished to do so.

[29] The Appellant has maintained since September 9, 2009 that she did not alter the certificate, nor did she know how the altered certificate was sent to the attention of licensing. She maintained that position throughout the course of the hearing despite many opportunities to change her position. This leads to the second issue arising in this case, namely, in light of our finding that the Appellant altered the first aid certificate, and the fact that she continued to maintain that she did not do so, is the MHO's finding that she was not a person of good character, and failed to meet the requirements of s. 11 (2)(a)(i) of the *Act* justified?

Should the decision of the MHO be upheld?

[30] This panel agrees that the decision of the MHO to deny the Appellant a licence to operate a preschool should be upheld. This panel has not accepted the Appellant's evidence that she did not intend to send either a copy of a cancelled first aid certificate or the altered first aid certificate to the licensing officer.

[31] While the Appellant's decision to send an altered first aid certificate to the licensing officer may have been a momentary lapse of judgement, done in an effort to ensure that the daycare was opened on time, the Appellant's continued denial that she altered the certificate or sent the certificate to the licensing office, raises sufficient concern about her character to warrant the MHO's decision in this case. We accept the argument put forward by the MHO that if the MHO is unable to trust that the Appellant will be forthright in her dealings with the licensing office, he does not have the assurance he needs that she will promptly comply with all requirements of a licensee under the *Act*.

[32] Although it is our finding that the MHO's decision was warranted, we do not intend at this time to place any restrictions on the Appellant's ability to apply for a new licence in the future. We agree that the decision should properly be made by the MHO as to whether the Appellant is able to regain the trust of the licensing office, and demonstrate that she is an appropriate candidate to be considered a licensee under the *Act*.



[33] Accordingly, the appeal is dismissed.

July 12, 2010

“Marcia McNeil”

Marcia McNeil, Vice Chair