



**Community Care and
Assisted Living
Appeal Board**

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DECISION NO. 2012-CCA-002(b)

In the matter of an appeal under section 29 of the *Community Care and Assisted Living Act*, S.B.C. 2002, c.75

BETWEEN:

AMS, Licensee
(operating Joan Crescent Manor, an Adult Long
Term Care Facility)

APPELLANT

AND:

Dr. Richard S. Stanwick, Chief Medical Health
Officer, Vancouver Island Health Authority

RESPONDENT

BEFORE:

A Panel of the Community Care and Assisted
Living Appeal Board
Richard Margetts, QC, Panel Chair
Helen Ray del Val, Board Chair
Tung Chan, Board Member

DATES:

November 13-15, 2013; November 18-22,
2013; April 12-13, 2014; and April 30, 2014

PLACE:

Victoria, BC

APPEARING:

For the Appellant: Peter Blumenschein and
Eric Blumenschein, Agents
For the Respondent: Kathryn Stuart, Counsel

REASONS:

Written by: Helen Ray del Val
Concurred in by: Richard Margetts
Tung Chan

APPEAL

[1] The Appellant, AMS, is the Licensee of Joan Crescent Manor ("JCM"), a care home for the elderly in Victoria, B.C. She has appealed to the Community Care and Assisted Living Appeal Board (the "Board") to reverse the October 5, 2012 decision of the Respondent (the "Decision") which resulted in the following conditions being attached to her licence to operate JCM:

1. AMS will not direct any aspect of care provided to persons in care, and will not be the Manager.

2. Manager, approved by Licensing, is in place for a minimum of 35 hours per week on site to perform duties under the *Community Care and Assisted Living Act* including responsibility for the day to day operations of the facility.
3. Registered Nurse on site for a minimum of 15 hours per week, with a minimum of 2 hours per day.
4. If the Manager, approved by Licensing, is a Registered Nurse then his/her hours on site can be used towards meeting the requirements of condition 3.
5. Registered Nurse will be responsible for:
 - a. Making decisions regarding admission of new persons in care and the retention of those in care to ensure that persons in care will receive both safe and adequate care;
 - b. Supervising employees in the provision of care; and
 - c. Coordinating and monitoring the care of persons in care.
6. On call Registered Nurse coverage provided 24 hours per day, seven days a week.
7. Joan Crescent Manor will not provide housing to non-ambulatory persons in care.

(These are collectively referred to as the "New Conditions" and each individually as the Condition as it is numbered.)

[2] This appeal is governed by section 29(11) of the *Community Care and Assisted Living Act* (the "Act")¹. Under that section, the Appellant has the burden of proving that the Decision was not justified and the Board must receive evidence and argument as if the proceeding before it were a decision of first instance.

[3] The main issue to be decided is whether the Appellant has proven that the Respondent's October 5, 2012 Decision was not justified. To answer this question, the Panel has examined all of the evidence before it afresh to determine whether the Decision was justified based on the totality of the evidence.

CONCLUSION

[4] For the reasons set out fully below, this appeal is dismissed as the Appellant has not satisfied the onus of proving that the Decision was not justified.

[5] We acknowledge the tremendous efforts the Appellant undertook to defend against the enforcement action taken by the Respondent and we know that this conclusion must be deeply disappointing to her and her family.

¹ The full text of sections of legislation and regulations referred to in these reasons are set out in Appendix 1

[6] The Appellant should know that she struck the Panel as a strong, intelligent woman with a formidable work ethic who dedicated her life to the operation of the care home. It is clear that the Appellant operated JCM with great pride. Photographs of the care home which the Appellant brought to show the Panel at the hearing display the structure of JCM to be an elegant heritage home. Photos of some of the persons in care (also referred to in these reasons as “residents”) on their outings and activities in the home evidence much happier times for the residents, the Appellant and her family.

[7] We heard the great dismay the Appellant expressed at how she felt the Respondent was portraying JCM in this appeal proceeding: she felt it was comparable to making “the Taj Mahal look like a dump.” She took great pains during the hearing to present a “more balanced” portrayal of JCM by highlighting incidents where good care was delivered and aspects of the facility were operated in compliance with Act and regulations.

[8] The Appellant should not interpret the dismissal of this appeal as a failure on her part to impress on the Panel that there were aspects of JCM’s operations that she believes were excellent, or as a failure on the part of the Panel to appreciate that not all aspects of the operations ran afoul of regulatory requirements.

[9] If it appears to the Appellant that not enough attention has been given to the positive incidents and aspects she stressed, it is not because we did not hear them or that we summarily dismissed them. We know that despite some very significant and serious regulatory infractions, not all aspects of JCM’s operations were non-compliant. We cannot base our decision on the positive incidents and aspects that the Appellant points to because they generally do not relate to the negative events that raised the regulatory concerns that called for enforcement action and ultimately led to this appeal proceeding. The focus of this appeal proceeding is on the incidents that raised regulatory concerns.

OUTLINE OF THESE REASONS

[10] These reasons are organized into sections that will outline: the background to the appeal, including the Appellant’s grounds for appealing and the Panel’s ruling on the admissibility of certain evidence; a summary of the relevant facts; and a list of issues to be determined on the appeal, followed by a discussion of those issues and the Panel’s findings.

BACKGROUND

The Facility

[11] JCM was first licensed as a long term adult care facility in 1989. During the relevant time for this appeal, up to 7 persons in care resided at the facility and the Appellant was the manager.

[12] Over the years, Community Care Facilities Licensing, Vancouver Island Health Authority (“Licensing”) conducted both complaint initiated investigations and

routine inspections of JCM and uncovered regulatory contraventions in its operation. Non-compliance became of growing concern to Licensing. No enforcement action had been taken against the licence and until 2008 the Appellant operated JCM without any conditions attached to her licence.

[13] In June 2008, the Appellant voluntarily agreed to operating JCM subject to the following conditions (the "2008 Conditions"):

1. Joan Crescent Manor will not provide housing to non-ambulatory persons in care.
2. Persons in care at this building must have the physical ability to exit the building independently.
3. Persons in care whose care needs deteriorate to a point that necessitates unscheduled professional nursing care on a long term basis will be required to move.
4. Persons in care will only "age in place" at this site if they conform to points 1 – 3 above.
5. Items 1 – 4 may be precluded with a care plan and addition of staffing as deemed appropriate and approved by the Medical Health Officer.

[14] By March 2012, there had been about 10 complaint initiated investigations of JCM. The investigation which began in March 2012 (the "Investigation") is the one that ultimately led to the imposition of the New Conditions² on the Appellant's licence to operate JCM.

The Investigation

[15] Between March 12 – 14, 2012, Jessica Jupp, Patricia Close and another former employee³ of JCM each separately complained to Sue Bedford, Director of Licensing, Ministry of Health about JCM's operations. After speaking with the complainants, Ms. Bedford forwarded the information she received to Licensing and requested an investigation of JCM.

[16] March 15, 2012 – Licensing advised the Appellant of the Investigation and requested she provide a Health and Safety Plan pending the Investigation, which plan was submitted by the Appellant and approved by Licensing the same date. As part of the Investigation, staff from Licensing inspected the facilities, reviewed JCM's documentation, and interviewed the Appellant, some persons in care and JCM staff.

[17] March 22, 2012 – the Respondent delegated Gillian Baird, Leader, Program Development and Planning, Contracted Services, Vancouver Island Health Authority to assist in the Investigation and assessment of conditions on the licence of JCM.

[18] April 17, 2012 – Licensing received an email from Sylvia Cummins describing observations and concerns noted during her employment as a Registered Nurse

² The 2008 Conditions and the New Conditions are set out in full in Appendix 2 for reference.

³ The third original complainant is Joscilyn Ouellette (Jupp) who did not testify at the hearing and whose prior written statements have all been disregarded by the Panel due to material internal inconsistencies.

("RN") at JCM. Ms. Cummins had worked at JCM from November 2010 to January 2011.

[19] Through the investigation process, Licensing identified concerns with the operation of JCM in the following areas:

- Emergency procedures
- Environmental sanitation
- Complaint process
- Visitors
- Persons in care Family Council
- Policies
- Record keeping
- Care practices
- Staffing – coverage and training/qualifications
- Emotional abuse
- Health and Safety Plan/Conditions on licence
- Ability of manager/Licensee

[20] May 17, 2012 - Licensing issued its summary of apparent findings (the "Summary of Apparent Findings"). The Summary of Apparent Findings is a preliminary report that summarizes what Licensing had apparently found taking into consideration the information gathered from the Investigation. Licensing presented the Summary of Apparent Findings to the Appellant to provide an opportunity for her to correct, explain, comment and otherwise respond to the apparent findings. The Summary of Apparent Findings does not include any recommendations for enforcement action.

[21] June 28, 2012 - after taking into consideration the Appellant's responses to the Summary of Apparent Findings, Licensing issued the Final Investigation Report (the "Report"). In this Report, Licensing sets out the recommendation to take enforcement action against the Appellant by attaching certain conditions to her licence to operate JCM. Licensing makes those recommendations to the Respondent who then makes a preliminary decision on what action to take.

[22] July 5, 2012 - The Respondent accepted Licensing's recommendation and made a preliminary decision attaching the recommended conditions to the licence. In the preliminary decision, the Respondent advised the Appellant of her right to ask for a reconsideration of that decision.

[23] August 7, 2012 - The Appellant made a written response to the preliminary decision and requested that the Respondent reconsider his preliminary decision. She provided further responses and information on August 9, 2012 and October 1, 2012. As a result of the responses of the Appellant, the Respondent sought further information from Licensing.

[24] October 5, 2012 – After taking into consideration the further written submissions from the Appellant and consulting with the fire department, the Respondent issued the Decision attaching the New Conditions to the Appellant's

licence to operate JCM. It is that Decision which the Respondent issued on reconsideration that is the subject of this appeal.

The Appeal

Oral Hearing

[25] The appeal proceeding, which was commenced in November 2012, was long, difficult and acrimonious reflecting the bitterness and distrust the Appellant and her family felt towards Licensing.

[26] The oral hearing part of the appeal took 11 days to complete. Final argument and reply were made in writing after the oral hearing. A voluminous amount of documentary evidence was introduced.

[27] During the oral hearing, the Respondent's legal counsel Kathryn Stuart called the following witnesses:

- The Respondent, Dr. Stanwick, the Chief Medical Health Officer, Vancouver Island Health Authority ("VIHA"), who made the Decision.
- The VIHA licensing officers who carried out the inspections and interviews during the Investigation.
- Alison Coupar, Supervisor, Licensing Program, VIHA who was the direct supervisor of the licensing officers who conducted the Investigation. She was responsible for the investigation plan.
- Kim Bruce, Regional Manager of Licensing, VIHA who is Alison Coupar's supervisor and becomes involved in complex investigations where there are multiple issues, as in this case. Ms. Bruce played a key role in deciding to recommend enforcement action against JCM by imposing conditions on its licence.
- Gillian Baird, Leader, Program Development and Planning, Contracted Services, VIHA who had been delegated by the Medical Health Officer on March 22, 2012 to assist in the Investigation and provided a "Clinical and Performance Monitoring Assessment". Ms. Baird also produced an expert report on October 6, 2013 and testified as an expert witness during the hearing.
- Jessica Jupp, a residential care attendant ("RCA") who worked at JCM from January 24 to March 14, 2012. She was one of the original complainants who laid a complaint in March 2012 about JCM with the Director of Licensing.
- Patricia Close, an RCA who had worked at JCM for about 5 months from October 2011 to March 2012. She also complained to the Director of Licensing about JCM in March 2012.
- Sylvia Cummins, an RN who worked at JCM from November 2010 to January 2011.

[28] The Appellant's agent Mr. Blumenschein called the following witnesses:

- The Appellant herself.

- Gail Painchaud, an RCA who worked at JCM for about 3 months from March 23, 2012.

Grounds for Appeal

[29] The Appellant believes that the complaints which initiated the Investigation were lodged by disgruntled ex-employees "so that they could 'get back' at [AMS] for reasons only they knew." The allegedly disgruntled ex-employees included the Respondent's witnesses Jessica Jupp and Patricia Close.

[30] The Appellant firmly believes that the outcome of the Investigation by VIHA had been pre-ordained by political powers acting through Sue Bedford, the Director of Licensing in the Ministry of Health. She feels she was being persecuted over an incident that had occurred in 2011 where VIHA was unable to find any regulatory contravention against JCM. That incident arose out of a dispute over a payment that JCM had received for a prospective resident who unfortunately passed away before moving into the facility. The husband of the deceased demanded the return of the payment from JCM and publicized the dispute through the media. VIHA investigated and found that JCM had not breached any conditions of its licence by not returning the money. The Appellant believes that Sue Bedford, acting for the Ministry of Health, had ordered VIHA to conduct this Investigation specifically to secure findings of regulatory non-compliance against JCM and punish it with enforcement action where VIHA had been unable to find grounds to do so before.

[31] The Appellant believes that:

- Licensing "joined the cause" of those employees who were "out to get [AMS]", and
- Licensing failed to act in good faith and that the Investigation was flawed because:
 - Licensing did not question the motives of the complainants, and
 - Sue Bedford, Director of Licensing in the Ministry of Health, unduly influenced and/or directed the outcome of the Investigation.

[32] In her reply argument, the Appellant stated that "the investigation and report was biased and influenced by the malicious complaints of disgruntled employees."

Preliminary Matter – Admissibility of Certain Evidence

[33] On November 21, 2013 after 7 days of hearing, all of the Respondent's witnesses had testified and the Respondent's case had been completed. At that point, Mr. E. Blumenschein, the Appellant's agent, advised the Panel that the only witness he wished to call was the Appellant, AMS, who was unfortunately ill and not feeling well enough to testify. Consequently, the hearing was adjourned to continue on April 12, 2014.

[34] After the adjournment the Appellant delivered 5 volumes of documents that she wished to introduce into evidence (Exhibits 16A to E⁴): Exhibits 16A to D were delivered to the Board and Respondent between March 14 and 28, 2014, and Exhibit 16E when the hearing reconvened on April 12, 2014.

[35] The documents in Exhibits 16A to E can generally be categorized as follows:

- Numerous apparent duplicates of documents already included in the Appeal Record produced by the Respondent under Rule 7⁵ of the Board's Rules of practice.
- Photographs showing residents' activities such as birthday celebrations and outings at JCM.
- Licensing guides, policies and publications such as "A guide to Community Care Facility Licensing in British Columbia".
- Care records (such as nursing progress notes, correspondence with physicians, resident information sheets, resident progress sheets, daily activity sheets) documenting the health condition of specific persons in care and the care delivered to them at JCM (the Appellant's "Care Records"). Some of these Care Records cover periods of time outside of the period of JCM's operations considered by Licensing in the Investigation.
- Miscellaneous Documentation.

Respondent's position

[36] The Respondent's counsel objected to the admission of some of the materials in Exhibits 16A to E for a number of reasons. First, she submitted that it was unfair to the Respondent as the witnesses who could and should have been allowed an opportunity to explain the documents or defend against the Appellant's allegations had already testified and were no longer available. Second, the relevance of some of the evidence to the issues was questionable. Third, the Appellant had had a number of opportunities throughout the investigation process and this proceeding to give notice of the documents in Exhibits 16A to E and make them available to the Respondent but had not.

[37] Furthermore, counsel for the Respondent submitted that it was unfair that the Appellant should be allowed to take advantage of the late opportunity resulting from the unexpected adjournment due to the Appellant's illness to introduce additional evidence.

⁴ At the hearing, they were marked as exhibits 16A to E, each alphabet letter corresponding to a volume. In these reasons, we will continue to refer to them as Exhibits 16A to E.

⁵ 7(1) The appeal record consists of the decision being appealed, the respondent's reasons for decision and all documentary evidence, reports, policies, legislative provisions and submissions considered by the respondent in making the decision, but it does not include solicitor client privileged communications between the respondent and the respondent's lawyer.

Appellant's position

[38] Mr. E. Blumenschein submitted on behalf of the Appellant that the additional documents should not surprise the Respondent as some were already part of the Appeal Record. He explained that many others were the Respondent's documents such as their own guides and policies which he intended to use to prove how the Investigation was flawed.

Ruling on admissibility

[39] At the hearing, the Panel reserved its ruling on the admissibility of the documents in Exhibits 16A to E and reminded the Appellant to refer specifically to any document in those volumes that she wished to draw to the Panel's attention.

[40] For those documents contained in the Appellant's Exhibits 16A to E that are duplicates of documents already introduced in the hearing (for example, those included in the Appeal Record), whatever ruling on their admissibility and weight that had already been made during the hearing still stands.

[41] Those documents that are not duplicates (the "New Materials") are admitted. All of the Appellant's Care Records will be considered and assigned some weight. Other New Materials are assigned little weight because they are of limited relevance and/or probative value to the matters at issue in this proceeding.

FACTS SUMMARY

[42] The following is a summary of the relevant facts found by the Panel. The evidence on which the findings are based is discussed in the Discussion and Analysis section of these reasons.

Staffing

[43] JCM had a high turnover of staff and was staffed extensively by short term contract health care workers supplied by a third party agency.

[44] There were times during the Investigation where up to half of the staff at JCM were new.

Staff Coverage and Residents' needs

[45] There were shifts where there was inadequate staff coverage. For example, there was no RN coverage at night and there was only one awake staff at night.

[46] At least two persons in care needed vigilant toileting care overnight. For another person in care the physician's order had been for two-person transfers at all times.

[47] Up to three persons in care were physically unable to exit the building independently at all times.

[48] A lone staff member would not be able to evacuate the residents in time in the event of a fire as JCM does not have a sprinkler system.

[49] The Appellant knew that the staffing level was inadequate.

Staffing Pattern

[50] Staff scheduling was at times chaotic and haphazard. It was impossible to determine from all of the documentation and evidence that the Appellant submitted in the proceeding what the staffing pattern was at JCM.

Screening before hiring

[51] The Appellant did not maintain mandatory staff records such as immunization records, character references, copies or verification of qualifications, and/or criminal record checks for some of the staff members working at JCM.

Training and supervision

Orientation

[52] Not all new staff was given an orientation to the facility before starting to work there.

[53] The Appellant did not have any job description documentation for RCA, licensed practical nurse ("LPN"), RN and housekeeper positions.

[54] There was no staff performance review process in place.

Emergencies and Fire Drills

[55] The Appellant did not adequately train staff in emergency procedures.

[56] There were no records of fire drills kept by the Appellant. If fire drills were conducted, they did not include practising evacuation of residents from their bedrooms.

Tasks by Unqualified/untrained Staff

[57] The housekeeper who did not have the requisite training performed direct care tasks such as assisting with dressing and toileting persons in care.

[58] There were instances where non-regulated employees such as RCAs were handling and/or administering medication to persons in care that only regulated employees such as RNs were authorized to.

[59] The Appellant had not implemented any Task 2 training for medications. Task 2 training is the delegation of tasks normally performed by professional staff such as an RN to a non-professional staff member such as an RCA. In summary, Task 2 training entails identifying and analyzing which tasks are delegable ones, and the training that must be implemented before delegation.

[60] As at the time of her interview by Licensing on March 28, 2012, the Appellant was not aware of what Task 2 training was.

Medication Administration

[61] At JCM, staff did not always receive training before they handled or administered medication.

Documentation*Care Plans*

[62] The respective care plans of several persons in care were not kept up to date.

[63] The Appellant did not know if the nutrition care plans were completed.

Nursing Progress Notes

[64] The nursing progress notes that are meant to record the care provided to residents at JCM were inaccurate and deficient.

Admission Records

[65] Regarding new resident admission records, the Appellant did not know:

- if there were assessment forms developed for new resident admissions. She believed that was the nurse's responsibility.
- if one of the residents had been assessed by a nurse prior to admission. There was no assessment after admission.
- if another resident had had an assessment completed after admission.

Menus and Substitutions

[66] The Appellant did not display menus until after Licensing pointed out the requirement to do so. After she displayed the menus, she did not always follow them and she would sometimes make meal substitutions without documentation.

Medication Administration Record

[67] When medication is administered to persons in care at JCM the practice is to record only whether the medication was given "am" meaning in the morning or "hs" meaning at bedtime. There was no recording of the actual time medication was given to a resident made in the medication administration record for the person in care or in other documentation.

[68] The Appellant was not aware that the actual time medication is administered must be recorded.

[69] For person in care FM there was an order for "Tylenol #3 po BID". Documents that ought to have recorded the dosage administered to her on Dec 18, 20, 24, Jan 12, Mar 18, 21 and 23 were missing.

[70] New RCA staff was unaware of the reason for which "Tylenol #3 po BID" had been ordered for FM. The Appellant believes: "It is completely reasonable that new staff would not know this."

Medication Errors and Reportable Incidents

[71] Some residents had been prescribed potent medication such as narcotics or other controlled substances to be administered on an "as needed" basis. There were instances where such medications were given to some persons in care without

any evidence that an assessment of "need" had been carried out before administering the medication.

[72] A nitroglycerin transdermal patch was found to be still in place on resident OS in the morning of March 22, 2012 when it had been ordered to be removed the evening before. This incident was noted as a medication administration error by expert Gillian Baird in her March, 29, 2012 Clinical and Performance Monitoring Assessment but the Appellant had not reported it to Licensing as required by the regulations.

[73] Other instances of medication errors are:

- On March 10, 2012 a staff RCA had mistakenly placed a fentanyl patch on person in care HH. The administration of fentanyl patches should have been carried out by an RN.
- Sylvia Cummins reported and testified that the medication Digoxin, had been administered without a prior assessment by a nurse of the resident's heart rate. She explained that Digoxin is a drug that has the effect of slowing heart rate and that a nursing assessment, including taking the heart rate of the resident, must be conducted before it is administered. It is not to be administered if the heart rate is below a certain rate.
- Jessica Jupp, an RCA who used to work at JCM, testified that one RCA had forgotten to administer bedtime medication and another had given a "double dose of morphine" to another person in care HH.

Sanitation

[74] Many garbage cans at JCM had not been lined with garbage bags. Some garbage cans were lined with newspapers or paper bags. Some garbage cans had discarded food items and some contained used incontinence pads.

[75] Washcloths were reused for peri-care and not washed in between uses.

[76] Some persons in care at JCM had developed urinary tract infections.

Regard for the Dignity of Persons in Care

Peri-care policy

[77] JCM adopted a practice of using showerheads for peri-care for persons in care. Some residents were upset by this practice.

[78] On June 25, 2012, the Appellant submitted a "Bidet Shower Head Training Policy" instructing staff on how to properly use a showerhead without mention of alternative options to offer to residents for peri-care.

Restricting visits

[79] The Appellant had implemented a policy requiring 72 hours notice before visits and restricting visiting hours, which policy applied to one person in care OS,

and two of his visitors. The policy also did not allow OS to communicate with those two visitors in private.

[80] The Appellant justified this practice as having been implemented in order to protect OS from what she suspected was financial abuse by those two visitors. However, OS had been assessed as competent and healthy by his physician and there was no evidence of financial abuse.

Person in Care Family Council

[81] The Appellant had not established a family and person in care council to meet with residents and their families or representatives. She was not aware until March 2012 that one was required.

Complaints

[82] The Appellant had a written policy on Dispute Resolution and Complaints but no actual process to receive, record and deal with concerns, disputes or complaints from residents or their families. She did not keep a record of complaints or concerns and how they were resolved.

Non-Compliance

Breach of 2008 Conditions on Licence

[83] Towards the end of March 2012 at least 2 persons in care, TD and JB, were physically unable to exit the building independently. A third person in care, HH, was not always physically able to exit the building independently.

[84] At that time the Appellant's licence was subject to the 2008 Conditions.

[85] The Appellant had not sought the prior approval of the Medical Health Officer to allow her to house non-ambulatory persons in care or those who were physically unable to exit the building independently.

Breach of Licensing's Directions

[86] At the start of the Investigation, Licensing requested that the Appellant provide a Health and Safety Plan pending the Investigation, which plan was submitted by the Appellant and approved by Licensing the same date. At that time, the Appellant was advised by Licensing in writing that the Health and Safety Plan which she had submitted that day could not be changed without prior approval by Licensing.

[87] The Appellant later submitted an amended Health and Safety Plan to Licensing without first obtaining approval and then subsequently changed the amended Health and Safety Plan again without prior approval by Licensing.

Compliance History

[88] Kim Bruce explained that, to ensure that a progressive disciplinary approach is taken, Licensing considers the compliance history of a facility in determining the appropriate enforcement action to take.

[89] In JCM's case, the December 18, 2007 investigation report #S-07-083 found the Licensee to have committed several contraventions of the adult Residential Care Regulation, B.C. Reg. 96/2009 ("the Regulation") by her failure to:

- Allow the persons in care to receive visitors at any time;
- Maintain the facility in a sanitary condition and in good repair;
- Ensure that care staff be available and trained to manage oxygen;
- Review and keep current the care plans of the persons in care;
- Develop and implement individualized care plans for respite clients; and
- Provide staff with the required training in the administration and handling of medication.

[90] The September 4, 2008 investigation report #S-08-040 found the following contraventions of the Regulation:

- No pain assessments had been carried out by an RN before administering morphine to a person in care;
- There was no RN available at the facility;
- Staff had not signed for all medications on the medication administration record;
- Despite a physician's written instructions to administer only half of a fentanyl patch to a person in care and directions on how to do so, no staff member in the facility had been trained to administer the fentanyl patch;
- The Licensee gave medication to persons in care without having received training in doing so; and
- The Licensee admitted a person in care who was not physically independent and able to exit the building.

[91] Investigation report S-11-049 of July 25, 2011 documented contraventions resulting from deficiencies in the care plan of a person in care.

[92] The inspection records of JCM dating back as far as 1990 also document occasional contraventions resulting from incomplete and out of date care plans for persons in care, errors in medication administration records, inadequate staffing and training, lack of sanitation, and failure to develop required documentation including policies and staff records.

ISSUES

[93] The primary issue to be determined on this appeal is whether the Decision that resulted in the New Conditions being attached to the Appellant's licence to operate JCM was justified. In considering this issue, we have considered a number of sub-issues which will be discussed below:

A. Regarding the Appellant's submission that the complaints and resulting Investigation were motivated by bad faith:

1. Is there evidence that the complainants laid their complaints out of bad faith?

2. Was the Investigation flawed or did Licensing fail to act in good faith by not questioning the motives of the complainants?
3. Is there evidence that Sue Bedford, Director of Licensing in the Ministry of Health unduly influenced or directed the Investigation and/or its outcome?
4. Whether there was actual bias or a reasonable apprehension of bias during the Investigation and/or on the part of the decision-makers?

B. Regarding the imposition of the New Conditions on the licence:

5. Has the Appellant operated JCM in a manner and at a standard that promotes the health, safety and dignity of persons in care?
6. Does the Appellant have the character and skills required to manage JCM?
7. Is each of the New Conditions justified?

DISCUSSION AND ANALYSIS

Decision of First Instance

[94] The Board's mandate is to determine whether the Appellant, after a full hearing, has met her burden of convincing us that the Decision resulting in the attachment of the New Conditions to JCM's licence was not justified.

[95] The Act requires the Board to proceed as if the appeal were a decision "of first instance". The Panel must therefore conduct the proceeding as if it were a fresh hearing, examine the evidence and arguments anew, undertake its own analysis of the issues and, where appropriate, make its own findings of fact.

The Evidence

[96] A voluminous amount of evidence was introduced during the proceeding and it might be helpful to explain generally the evidence that was before the Panel, the circumstances under which it was produced and the overall approach the Panel took.

The Appeal Record

[97] The Respondent filed six volumes of materials as the Appeal Record required under Rule 7 of the Rules of procedure of the Board. The purpose of the Appeal Record is to give to the Board and the Appellant, as a starting point for the appeal, a complete and full copy of all information that the Respondent considered in making the Decision.

[98] On receiving those materials, the Appellant was convinced that the Respondent had not made full disclosure and applied to the Board for an order directing the Respondent to produce certain information (the "Requested Information") that the Respondent had not included in the Appeal Record. The Board so ordered on April 8, 2013⁶.

The Appellant's Distrust

[99] The Respondent delivered the Requested Information but the Appellant continued to insist that the Respondent had not made full disclosure. The Respondent provided statements at various stages of the proceeding through his counsel and Licensing staff members that searches for such documents and information had been conducted and there were no more in their possession.

[100] Throughout the entire process, the Appellant remained adamant that Licensing had not disclosed all of the materials that they ought to have and in particular evidence that would implicate Licensing.

[101] The Appellant expended much effort throughout the proceeding on searching for evidence that JCM had been unfairly targeted by the authorities. The Appellant looked to the Respondent to produce evidence to convince her that this was not so.

The Panel's Approach

[102] A large amount of the evidence which the Appellant wished to introduce appeared only tangentially relevant and did not address the specific events on which Licensing based their finding of contraventions. However, the Appellant felt that the evidence was necessary to provide a more balanced view of JCM's operations.

[103] The Panel extended an exceeding amount of latitude to the Appellant to ensure that there was a "full and fair disclosure of all matters relevant to the issues"⁷. Many times during the hearing, the Respondent objected to the admission of the evidence that the Appellant wished to introduce on the ground that it was neither relevant nor probative. The Respondent eventually registered a "standing objection."

[104] Short of allowing the proceeding to be turned into a fishing expedition for evidence to substantiate the Appellant's steadfast belief that she had been wronged, the Panel allowed virtually all of the evidence that the Appellant sought to introduce to be introduced.

[105] In addition, recognizing that the Appellant did not have legal counsel to assist her in the appeal, the Panel gave significant latitude to the Appellant's agents when presenting evidence, questioning witnesses and making submissions.

⁶ DECISION NO. 2012-CCA-002(a), April 8, 2013: <http://www.ccalab.gov.bc.ca/dec/2012cca002a.pdf>.

⁷ Section 38(1) of the *Administrative Tribunals Act*

A. Motivation behind Complaint and Investigation

Issue 1 - Motive of Complainants – *Is there evidence that the complainants laid their complaints in bad faith?*

[106] We find that there is no evidence that the complainants were acting out of malice as alleged by the Appellant.

[107] Three of the complainants, Patricia Close, Jessica Jupp and Sylvia Cummins testified at the hearing. A fourth complainant, Ms. Joscilyn Ouellette (Jupp) did not testify. The Panel did not take any of Ms. Ouellette's statements into consideration as her written evidence contains material internal inconsistencies that could not be clarified in her absence.

[108] Patricia Close, Jessica Jupp and Sylvia Cummins were each asked why they had laid their complaints with Licensing. Each of them expressed:

- A genuine care of the residents they had to look after;
- A duty to their profession as health care providers; and
- A grave concern for the irregularities they witnessed at JCM.

[109] All of them also pointed to intervals during their employment at JCM when their relationship with the Appellant was working relatively well. Their demeanor and their testimony on the stand showed that they did not relish having taken on the role of "whistle blower" against their ex-employer. None communicated any pleasure or sense of vindication at seeing JCM's present predicament.

[110] We find that there is no evidence to substantiate the Appellant's allegation that these complainants were acting out of malice and were "out to get" her.

Issue 2 - Duty to Investigate Every Complaint – *Was the investigation flawed or did Licensing fail to act in good faith by not questioning the motives of the complainants?*

[111] Even had the complainants been motivated by factors less honourable than genuine concern for the residents at JCM, Licensing would still have had to investigate the complaints because it is the Medical Health Officer's legislated duty to do so.

[112] Under section 15 of the Act every complaint that a community care facility is not being operated in full compliance with the Act, the Regulation or the terms or conditions of its licence must be investigated. There is no discretion accorded the Medical Health Officer to decide whether or not to investigate depending on the motive of the complainant. In this case, the Investigation uncovered a significant amount of other evidence which corroborated and added to the information provided by the complainants. Where the factual basis of Licensing's findings is not founded solely on the complainants' allegations and there is sufficient other evidence to support the findings the question of what motivated the complainants to complain becomes practically inconsequential. Therefore, not questioning the complainants' motives in this case is not a flaw in the Investigation and does not show that Licensing was not acting in good faith.

Issue 3 – Influence of Sue Bedford- *Is there evidence that the Director of Licensing unduly influenced and/or directed the investigation and/or its outcome?*

[113] The Appellant issued a summons to Sue Bedford, Director of Licensing in the Ministry of Health, requiring her to testify at the hearing. The Appellant was convinced that Ms. Bedford had directed and/or unduly influenced the Investigation and its outcome but had no evidence that she had done so.

[114] Counsel on behalf of Ms. Bedford applied to the Panel to cancel the summons on the ground that Ms. Bedford's testimony was not reasonably required: she did not have first-hand knowledge of much of the evidence that formed the basis of the Decision and the individuals who did have such first-hand knowledge were testifying at the hearing, as were those who were responsible for making the determination to impose conditions on JCM's licence. Counsel further submitted that the obligation of the Panel to examine the evidence afresh and its ability to make its own findings in this proceeding affords the Appellant a fair and new opportunity to be heard and present her evidence to the Board in regard to whether the conditions are justified.

[115] The Panel adjourned that application and postponed deciding on whether to cancel the summons until the factual basis to support the Appellant's allegation that Ms. Bedford directed and/or unduly influenced the Investigation and its outcome became more apparent.

[116] During the hearing, the Respondent called as witnesses the licensing officers who carried out the Investigation, as well as Kim Bruce, who played a key role in deciding to recommend conditions be attached to JCM's licence. Ms. Bruce testified that she did not receive any directions from Ms. Bedford regarding the Investigation, nor was she influenced by Ms. Bedford in coming to the conclusions she did.

[117] The Respondent, Dr. Stanwick, Chief Medical Health Officer, also testified that he had not been influenced or directed by Ms. Bedford to make the Decision.

[118] During the hearing, the Appellant was given several opportunities to explain on what evidence or facts she relied to support her belief that Ms. Bedford had directed or unduly influenced the outcome of the Investigation. While she was unable to point to any supporting facts or evidence, the Appellant held fast to that opinion.

[119] In conclusion, we find that there is no evidence to support a finding that Ms. Bedford directed or unduly influenced the Investigation or its outcome.

Issue 4 - Bias or Impartiality- *Whether there was actual bias or a reasonable apprehension of bias during the Investigation and/or on the part of the decision-makers?*

[120] The Appellant argues that the Investigation and the Report are biased. In assessing whether there is actual bias, the key question to ask is whether there is a factual basis for the findings in the investigation report.

[121] The 98 page Report (with 4 volumes of appendices) presented in detail the evidence that was examined and the weight assigned to the different pieces of evidence to support either conclusively or on a balance of probabilities each finding of fact. The Report then sets out all the findings of fact that form the basis of the determinations Licensing made. On the basis of those facts Licensing found over 50 regulatory contraventions.

[122] The Appellant had several opportunities to influence Licensing's findings of fact and the Report was made with the Appellant's input. The Appellant was interviewed and her objections and admissions recorded before the Summary of Apparent Findings was issued on May 17, 2012. She was then given the opportunity to respond to the Summary of Apparent Findings, and she did. The Report included the Appellant's responses.

[123] While it is clear that the Appellant disagrees with almost all of Licensing's findings, it is difficult to argue that the findings are not based on evidence and facts.

[124] In addition, we find that there is no reasonable apprehension of bias. The Supreme Court of Canada set out the reasonable apprehension of bias test in *Wewaykum Indian Band v. Canada*, 2003 SCC 45 (CanLII), [2003] 2 S.C.R. 259 at para. 60, citing *Committee for Justice and Liberty v Canada (National Energy Board)*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369 at 394 as follows:

[T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. ... [The] test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.

[125] Given all of the evidence cited by the investigators, the findings of fact stated in the Report, and the sworn testimony of the key decision-makers that their findings and determinations had not been influenced by the Director of Licensing, we find that a reasonable person would not have concluded that the decision-maker was unlikely to be able to decide the matter impartially and fairly.

B. Justification for Decision resulting in attachment of New Conditions

Issue 5 – JCM's operation - *Has the Appellant operated JCM at a standard that promotes the health, safety and dignity of persons in care?*

[126] Section 7 of the Act imposes a key and overarching obligation on a licensee to operate a community care facility in a manner that will promote the health, safety and dignity of persons in care.

[127] We find that the Appellant has not operated JCM in a manner that promoted the health, safety and dignity of persons in care. In fact, there were practices she adopted or allowed to be adopted at JCM that exposed the residents of JCM to

undue risk of harm to their health, safety and dignity. The evidence and facts lead to a conclusion that there has been a breach of section 7 of the Act.

[128] On a balance of probabilities, we also find that there are breaches of a significant number of regulations under the Act. But there is no breach more clear or important than that of the requirement to promote the health, safety and dignity of those placed in the care of a community care facility.

Staffing

[129] JCM did not have a sufficient number of adequately trained staff at all times to tend to the needs of the persons in care. As a result, the health, safety and dignity of persons in care were placed at risk.

[130] Section 42(1) of the Regulation states:

Staffing coverage

- 42 (1) A licensee must ensure that, at all times, the employees on duty are sufficient in numbers, training and experience, and organized in an appropriate staffing pattern, to
- (a) meet the needs of the persons in care, and
 - (b) assist persons in care with activities of daily living, including eating, mobility, dressing, grooming, bathing and personal hygiene, in a manner consistent with the health, safety and dignity of persons in care.

Insufficient Numbers

[131] The evidence establishes conclusively that there was not a sufficient number of staff at JCM specifically during the overnight shifts when there would only be one awake staff.

[132] The Appellant admitted to licensing officer Janet Partaik on March 28, 2012 that she believed the staffing level that she then had would be "okay when there were only five persons in care, with seven persons in care that was difficult and she needed another staff on at night." During her testimony on April 13, 2014, the Appellant testified that she alone was doing the "job of four people".

[133] As a result of there not being sufficient staff, the needs of some persons in care were not met. For example, some persons in care who needed but did not receive toileting care overnight were left in unhygienic circumstances which compromised their health and dignity:

1. Patricia Close stated that: "I would say sometimes toileting doesn't get done as often as it should be." She referred to BC, a person in care who needed vigilant and frequent toileting care as she was resistant to antibiotics and could become extremely ill if she developed a urinary tract infection. Patricia Close also stated that she was not always able to continue toileting BC as she would be called to attend to "whatever other drama is kind of happening there."

2. Jessica Jupp described finding another resident, JB, in the morning lying in her own excrement. She stated that JB "was waking up every morning, soaked, just covered, like lying in it, all over, and even her bum was breaking down so bad."

[134] In case of emergency, JCM was at real risk of not being able to safely evacuate all persons in care. The Assistant Fire Chief testified that, in his opinion:

- JCM would need three people to evacuate the residents since it does not have a sprinkler system⁸;
- JCM's fire safety plan, however, contemplates having only one person on staff at night; and
- For fire safety purposes, "on call" staff does not count.

[135] For any person in care who needed 2-person transfers to move from one position to another, the lone awake staff working the overnight shift would not have been able to provide timely assistance.

[136] Inadequate staffing placed not only the residents at risk, it also placed the lone awake staff on duty at risk of injury.

Staffing Pattern

[137] There is no evidence to support a finding of an appropriate staffing pattern at JCM.

[138] An appropriate staff pattern ensures that during any shift of work, there is a suitable mix of professional and non-professional staff to ensure that the needs of persons in care are adequately met. The documents submitted by the Appellant to Licensing on staff scheduling were very poor. They were often incomplete and not current, and therefore, do not reliably disclose what the level or pattern of staffing was at JCM.

[139] Gillian Baird testified that it was not possible to ascertain from the documentation available onsite at JCM, or by her conversations with staff on duty on the day she visited, as to what the staffing model at JCM was.

[140] Both Jessica Jupp and Patricia Close testified that they found the scheduling of staff at JCM while they worked there to be disorganized and unpredictable. Schedules were routinely changed with little notice to staff. This would have led to uncertainty in ensuring appropriate staff coverage at all times.

[141] The evidence on staffing which the Appellant introduced to demonstrate that there was a sufficient number of staff organized in an appropriate staffing pattern did not assist or support that argument. In fact, the documentation on staffing to which the Appellant referred only raised more questions about staff scheduling and the state of the records. We find on a balance of probabilities that the Appellant did not organize employees in an appropriate staff pattern.

⁸ JCM is a transitioned facility under section 94 of the Residential Care Regulation and was not required to have a sprinkler system.

Inadequate Screening before Hiring

[142] Section 37(1) of the Regulation prohibits a licensee or the manager of a community care facility from employing a worker unless he/she has obtained the prospective employee's criminal record check results and immunization record. Section 86 requires the licensee to keep those results and records for each employee.

[143] Section 39(1) of the Regulation prohibits a licensee from continuing to employ a person in a community care facility who does not provide to the licensee evidence of continued compliance with the Province's immunization and tuberculosis control programs.

[144] The Appellant had not obtained criminal record check results and immunization records for at least two staff members, Jessica Jupp and Patricia Close, before hiring them. When asked about the missing criminal record check and immunization records, the Appellant replied that she had asked for them and suggested that the employees who failed to provide them should be to blame. She said "I'm not sure why these girls out of everyone had an issue with following through when they were asked for something."

[145] The Appellant fails to recognize that her statutory duty as manager and licensee to obtain the mandatory records is not discharged by simply asking staff to provide them. She contravened sections 37(1), 39(1) and 86 of the Regulation by hiring these two employees, allowing them to start and continue to work at JCM despite not having obtained the required records.

[146] The failure to properly screen prospective employees for criminality is a failure to ensure the safety of the vulnerable elderly placed in her care. The failure to obtain immunization records reflects a lack of attention to the health and safety of not only the persons in care but of the employees and the public at large.

Failure to orient new staff

[147] Newly hired employees were not always given any orientation at JCM. The Appellant had not established a written policy on orientation of new staff as required by section 85(2) of the Regulation as at the time that the Investigation started in March 2012.

[148] At the hearing, the Appellant led evidence that she did provide orientation to new staff and that at least one of the employees, Gail Painchaud, who had told Licensing during the Investigation in March 2012 that she had not received any orientation had in fact received orientation at JCM.

[149] Ms. Painchaud's testimony showed that her independent recollection of the events which had occurred 2 years ago was poor. Many of her responses to questions were to the effect that she could not recall except where she was extensively led by the Appellant's agent in examination-in-chief. On the specific issue of whether she received orientation, Ms. Painchaud's answers were vague.

[150] Based on Ms. Painchaud's relatively weak testimony and the fact that JCM had no written policies on orientation of new staff, we find on a balance of probabilities that JCM did not provide orientation to all new staff. This finding is

consistent with the information provided by other new staff to Licensing that they had not received any orientation at JCM. Even if Ms. Painchaud received orientation training, there is evidence that others did not.

[151] The failure to properly orient new staff before they commence work exposed the persons in care to risk. For example, in the case of person in care FM, new RCA staff did not know why Tylenol #3 had been ordered.

[152] The Appellant's response that: "It is completely reasonable that new staff would not know this" is most troubling because JCM, having a high staff turnover rate, is extensively and continually staffed by care providers who are new to the facility. At the time when Gillian Baird carried out an inspection of the facility in March 2012, up to half of the staff were new.

Poor training and poor supervision of staff

[153] Once hired, staff were not adequately trained or supervised. There was no job description documentation for RCAs, LPNs, RNs and housekeepers. In contravention of section 40(1) of the Regulation, no performance reviews were given to staff.

[154] Both Patricia Close and Jessica Jupp testified that they had not seen the care plans for the persons in care. A care plan of a person in care is the document that records the overall plan of care for him/her based on his/her health condition and preferences.

[155] The Appellant allowed some employees to carry out duties for which they were not qualified. This contravenes section 40(3) of the Regulation which prohibits a licensee from permitting an employee to carry out any duties for which the employee does not have the necessary training.

[156] Some staff were performing tasks for which they were not qualified or authorized to perform. For example, the housekeeper who was not a trained RCA provided direct care to persons in care without training and RCAs administered medication that only RNs were authorized to.

Emergency training

[157] Section 51(1) of the Regulation requires a licensee to have an emergency plan that includes procedures for the evacuation of persons in care. Section 51(3) requires the licensee to ensure that each employee is trained in the implementation of the emergency plan.

[158] The Appellant had admitted during the Investigation that emergency training had not been provided to staff and former employees confirmed that they had not received any such training. At the hearing, however, the Appellant denied that she did not train staff or that staff were not aware of the emergency plan.

[159] When asked during cross-examination whether the Appellant trained staff or whether staff was aware of the emergency plan, she replied:

Well, they were -- the staff were expected to sign a sheet as having read the emergency procedures. And -- and since we are only five and six residents and it's all on the main floor

except one person it's -- and there are all these exits, it's just not comparable to a large facility where it would be a completely different situation. I mean, it's just like in your home, that's what it can be compared to. It's so small and it's just -- anyone would know, if there was an emergency, anybody would know just by common sense how to get out -- out of the building and how to help somebody else.

[160] She further explained that the emergency plan was "in the policy and procedure folder" for staff to read and acknowledge.

[161] From the Appellant's testimony, we find that even if emergency training were provided, it was inadequate. Requiring employees to read the facility's written instructions and/or policies on emergency procedures falls short of training staff in the implementation of an emergency plan that must include evacuation procedures.

[162] In addition to demonstrating the inadequacy of the emergency education made available to her staff, the Appellant's response highlights a lack of knowledge and appreciation of what emergency training entails and what the Regulation requires. The assumption that "anybody would know just by common sense" is not one that an operator of a care facility can safely make when vulnerable elderly persons, some of whom suffer physical and/or mental impediments, are placed in her care.

Fire Drills

[163] In her interview by licensing officer Janet Partaik, the Appellant admitted that no fire drills were held at JCM. At the hearing, the Appellant said that fire drills were held during the day but the persons in care would not be placed in their rooms or beds for the drills. When asked why she did not keep a record of the fire drills held, she pointed to: (1) her familiarity with the needs of the residents; (2) the trauma that fire drills in the middle of the night would cause the fragile residents; and (3) to the fact that JCM being a small facility with few residents is not comparable to large facilities.

[164] We are skeptical that fire drills were actually held given her assumption that in a small facility like JCM everyone would know by common sense how to evacuate during an emergency. That fire drills were not held is more consistent with her earlier admission to Licensing that no emergency training was provided and that no fire drills were held and with the fact that no record of fire drills was kept. Even if fire drills as described by the Appellant were held, they were ineffective and inadequate as those drills did not include practising the evacuation of persons in care from their beds or bedrooms. That no effective fire drills were held is further indication that emergency training as required by regulation was not provided.

Medication

[165] The Appellant did not ensure that all staff administering medication to persons in care were trained in medication administration before administering medication.

[166] We acknowledge the Appellant's position that:

The Residential Care Regulation 70(2)(b) does not state that employees who store, handle or administer medication to person in care must complete all training **prior to** storing, handling or administering medication. The regulation states only that staff must successfully complete any training programs.

[167] Section 70(2)(b) of the Regulation requires a licensee to “ensure that employees who store, handle or administer medication to persons in care have successfully completed any training programs established by the medication safety and advisory committee.

[168] We have not delved into what exactly the “training programs established by the medication safety and advisory committee” of JCM requires. It may be so that there has been no contravention specifically of section 70(2)(b). However, we find that not ensuring that employees who deal with medication are properly trained before they are allowed to do so is a serious failure to protect the health and safety of the residents. Regardless of whether there has been a breach of section 70(2)(b) of the Regulation, there has been a violation of section 7 of the Act which imposes the paramount requirement of promoting the health and safety of persons in care.

Conclusion on staffing

[169] Ensuring appropriate staff coverage, training and supervision are all basic management functions. The failure of the Appellant to properly carry out these functions amounts to a failure to discharge fundamental managerial duties. Furthermore, not properly training and supervising staff is particularly disconcerting where the operation has a high staff turnover rate and is continually staffed by new workers.

Documentation

[170] The legislation is prescriptive with respect to the documentation which a community care facility like JCM must keep for each person in care.

[171] Dr. Stanwick, the Respondent, who is the Chief Medical Health Officer of VIHA, testified at the hearing. Regarding record keeping, he said:

I'll again try to pace myself. But I just want to make a comment on the importance of record-keeping at a very high level. I've been in a position for over 40 years and the first time I stepped on the ward 42 years ago as a medical student, I was told unequivocally that if it isn't written down, it isn't documented, it didn't happen. And the entire health care system continues to focus on the importance of good documentation and record keeping to the point where our Health Authority is investing \$100 million in an electronic medical record to enhance our ability to keep good records because they are actually the backbone of good care. And so it's absolutely critical that good record keeping take place. And particularly when you're running an operation which is 24 hours

and seven. Whether it's a hospital or residential care, those records are the basis upon which many decisions are made.

[172] Poor documentation pervaded over many areas of JCM's operation: care plans for some persons in care were not updated despite substantial changes in their condition; nutrition plans were missing or were not updated for some persons in care; menu substitutions were not always recorded; medication administration records for some persons in care were deficient; staff records were incomplete and records of complaints had not been kept.

Care plans

[173] A licensee must develop a care plan for each person in care and every care plan must include specific components⁹. The care plan is the document which records the resident's preferences and the assessment of his/her health condition and the overall plan of care for him/her based on the assessment. It is the plan based on which important decisions about how to deliver care to a person in care are made.

[174] Section 81(4) of the Regulation requires a licensee to ensure the care plan of a person in care be reviewed and modified to reflect any substantial changes in the circumstances of the person in care. The evidence shows that, in contravention of section 81(4) of the Regulation, the care plans for 5 out of the six or seven persons in care at JCM had not been modified despite substantial changes to their respective conditions.

1. Person in care JB –The nursing progress notes for the period from February to March 2012 documented that she had fallen twice (on February 26 and March 19) within that short time interval and also showed that this resident was suffering overall rapidly declining health. Her care plan, however, had not been updated to reflect these critical changes. During examination-in-chief of the Appellant, Mr. Blumenschein referred her to the nursing progress notes for this person in care for the period of time starting from December 8, 2011 to April 4, 2012. Those notes showed that JB had actually fallen a third time on December 21, 2011.
2. Person in care TD – There was no updating of her care plan in response to substantial changes in her health status that were documented in other facility records including the nursing progress notes from January to April 2012. Such issues included neck and back pain, lack of appetite and refusal of meals, lack of mobility and general declining health. Furthermore, even though TD had been placed on a pureed diet, neither her care plan nor nutrition plan had been updated to reflect the change in diet. This resident's health was declining towards needing palliative care but no palliative assessment had been documented.
3. Person in care HH - The "Interdisciplinary Discharge and Transfer Summary" of March 6, 2012 from Royal Jubilee Hospital for HH recorded that she suffered depression, back pain and restless leg syndrome. The nursing

⁹ Section 81 of the Regulation

progress notes of March 28, 2012 submitted to Licensing by JCM also recorded HH's complaint of severe back pain. Jessica Jupp testified that HH ate meals in her own room. HH's care plan contained no information regarding back pain, depression or eating all meals in her room unsupervised.

4. Person in care FM - FM was also a resident who ate all her meals in her room. She also refused to participate in activities. Again, her care plan showed no plan regarding eating all meals in her bedroom or refusal to participate in activities.
5. Person in care VS – The nursing progress notes from February to April 2012 for this resident record that she started to complain of increasing knee pain about a month after admission. Over a course of 4 days, pain worsened to the extent that she apparently had difficulty completing a walk with her daughter. The care plan for VS made no reference to her knee pain.

[175] During the hearing the Appellant referred several times to the care plans being the responsibility of the RNs, failing to recognize that as manager and licensee she was ultimately accountable for compliance.

Nutrition Plans

[176] Several provisions of the Regulation prescribe rules and standards regarding food services and menus at long term care facilities because nutrition is critical to promoting the health of elderly persons in care. Section 81(3) mandates that a care plan for a person in care include a nutrition plan for him/her.

[177] At JCM, not every person in care had an updated and accurate nutrition plan. Some persons in care were placed on pureed diets with no notation in their nutrition plan or elsewhere in their care plans that they were to be given only pureed food.

[178] The Appellant told Licensing during the Investigation that she "was not sure if nutrition plans had been completed. That was the nurse's responsibility."

Menus

[179] Sections 62(4) and 87 of the Regulation require a licensee to display the menu for each weekly period and to keep a record of menus and menu substitutions. The Appellant displayed the menus after she was told by Licensing to do so but would sometimes change them without recording the substitutions. So even though she created the record as Licensing had required, she would fail to follow what she had written.

Medication Administration Record

[180] The omission to record the actual time at which medication is administered to persons in care is a contravention of section 78(2)(b) of the Regulation which states that "the date, amount and time at which the medication was administered" must be recorded.

[181] At the hearing the Appellant revealed that she did not know that actual time of administering medication must be recorded.

[182] In his testimony, Dr. Stanwick remarked on JCM's practice of recording only whether the medication was administered in the "am" or "hs" as follows:

And in terms of reviewing medication, the [medication administration records], on June 12th, the one thing that is still extremely peculiar was this idea of giving medication today and -- and at HS, which is at bedtime. This is not -- I mean the College of Pharmacists I know have already weighed in on this. That is an absolutely unacceptable charting practice. You need to know when the medications are because many of the medications, if you actually go to the Compendium of Pharmaceuticals, very much specifies whether these things should be given every four hours, every six hours, whether they can be given three times a day. Some medications are very specific as to the intervals; others, you do have some latitude in terms of administration. The question is to judge whether the medication is being given properly, you need to know exactly when it was given and by whom.

Staff records deficient

[183] Record keeping was also poor when it came to staff records. Criminal record check results and immunization records were also missing from some staff files.

Record of complaints and lack of complaint process

[184] Section 89(1) of the Regulation requires a licensee to keep a record of all complaints and concerns and the responses to them.

[185] The Appellant admitted during her March 28, 2012 interview with Licensing that JCM did not keep such a record. She had not known until then that it was a regulatory requirement to do so. However, at the hearing the Appellant insisted that she did have a "complaint logbook". She testified:

A. We did have a complaint logbook, but I didn't know that that was part of a -- was a regulation. That was our own interest for our own information that I kept that. This made it part of the regulation and that's what I didn't know.

Q. So you're -- at this time you -- you -- in the beginning of March you're the manager of the facility. This is before the --

A. Yes.

Q. -- investigation starts. You're the manager of the facility. And you're not familiar with the regulation that requires you to have a process in place to allow persons in care, their representatives, and staff to express their concerns and their complaints.

A. Yes, because we are a very small facility and we're communicating with each other all -- at all times, so there -- it didn't seem to be an important thing. But if it's a regulation, well, that's why I say we'll put one in. But it just -- our -- our interaction was ongoing and it was outcome based.

[186] The Appellant also insisted that Licensing “knew that there was a book, a logbook, for complaints. There was even a separate book for where I wrote that any complaints that they didn’t --- they could be anonymous. They would use that little book.” To date, the Appellant has not produced that book or other evidence of having kept a complaint log prior to the Investigation.

[187] According to her own testimony, the Appellant had not been aware of the regulatory requirement to keep a record of complaints or implement a complaint process until after the March investigation had begun. Her answers and the fact that no complaint logbook has been produced are more consistent with a finding that the Appellant had not kept a record of complaints as required by regulation.

Nursing Progress Notes wrong and deficient

[188] Jessica Jupp stated to Licensing during her March 20 interview that “progress notes and flow sheets for persons in care were utilized to record that care was provided”. She further stated that:

- Progress notes are very “spacey”: not much written down.
- There was not a lot of charting as there was no nurse to give any direction.
- Reporting between shifts was sporadic.

[189] Sylvia Cummins provided the following written statement to Licensing on April 17, 2012:

There were two places for care staff to write notes about clients. No one seemed sure about what was to be written where. The Manager [AMS] felt this was not being done properly so I eventually through discussion with her figured out what she wanted and verified it with her in written notes. I explained to care staff what she wanted and attached notes to the binders ... The reason I mention this is because sometimes things got missed because the communication was muddled. There was a computer program and pages at the back of the client’s charts for nurses’ notes. Again both were being used and both were incomplete ...The notes could be changed by anyone at any time. The client’s charts were cluttered with unnecessary paperwork and were also poorly organized. A doctor looked at me and said ‘where are the physician notes and where am I supposed to write’...

The Appellant’s view of JCM’s documentation

[190] At one point during the hearing, the Appellant expressed that documentation is her “weakness”. In her June 18, 2012 response to Licensing she said that “... there is continuous dialogue amongst all the staff about any changes in our residents.” She then acknowledges that: “Unfortunately not all of this dialogue makes it onto the written record.” Those statements showed some introspection and regret signaling some acceptance of responsibility.

[191] However, the rest of her testimony shows a general denial that the care documentation is inadequate and/or that she should be held responsible. Her testimony highlighted the inadequacies of the documentation and, more disturbingly an inability to recognize the inadequacies and accept responsibility. Her explanation of how the nursing progress notes for person in care FM should be interpreted is an example.

[192] FM is a person in care who said she had been scalded by hot water during a shower. During examination-in-chief, Mr. Blumenchein referred the Appellant to the nursing progress notes for FM included in Exhibit 16E. The September 5, 2011 entry in those nursing progress notes read:

Ct [client] very afraid to have a shower ... ct was crying and stated "last time I was scalded (burned). Nurse noticed shower water temperature incorrect and too hot. Please always check temperature of water.

[193] When Mr. Blumenschein asked the Appellant to explain the event, she: (1) disagreed that the water was too hot but would not admit that the nursing progress notes were wrong; (2) suggested that the nurse who checked the water temperature could be wrong; and (3) maintained that the person in care's negative reaction is not attributable to the temperature of the water but to the fact that the care aide who was helping her shower was Japanese.

[194] If we accept the Appellant's testimony that the water was not too hot, then we must find that the Sept 5, 2011 entry in the nursing progress notes that "Nurse noticed shower water temperature incorrect and too hot" is wrong.

[195] When the Appellant was asked where it was recorded that the Japanese care aide should not be helping FM with showering, she said she did not know but Mr. Blumenschein referred to the November 3, 2011, 1300 entry in FM's nursing progress notes. That entry does not mention showering, anyone's ethnicity, water temperature, or who should or should not be assisting FM with bathing, showering or other needs. The entry describes an outing which FM took to Monterey Centre for a sing along, lunch and movie.

[196] We find that the November 3, 2011 entry is unlikely to inform a reasonably intelligent person that FM should not be bathed by someone who is or looks Japanese. In fact, we cannot find any entry in the nursing progress notes for FM that warns of her negative reaction to being assisted in the shower by a Japanese care aide. Therefore, we conclude that the nursing progress notes are deficient and we question the Appellant's ability to ensure accurate records are maintained.

Conclusion re: documentation

[197] Inaccuracies pervade over much of the care records that care providers would have relied on and should have been able to rely on to determine how to properly care for the residents. The inaccuracies render the care documentation kept by JCM under the Appellant's watch unreliable. Unreliability of care documentation in a 24 hour care operation with a continual stream of short term contract and new staff creates a very real risk of error in delivering care to the persons in care.

Medication Errors and Reportable Incidents

[198] The evidence shows that medication errors did in fact occur which means that not only were persons in care exposed to increased risk of harm at JCM, they were actually harmed. For person in care OS, staff at JCM had omitted to remove a nitroglycerin transdermal patch on him that had been ordered to be removed in the evening before.

[199] In her March 29, 2012 report, Gillian Baird identified this and some other medication errors she uncovered as reportable incidents which the Appellant failed to report. Under the Regulation, a "reportable incident" includes a "medication error" which is defined as "an error in the administration of a medication which adversely affects a person in care or requires emergency intervention or transfer to a hospital."¹⁰

[200] The Appellant disagrees that this incident and others Ms. Baird identified were "reportable incidents". The Appellant states in her reply argument that reporting is not required because "none of the items Gillian Baird identifies in her March 29, 2012 report were adverse or required emergency intervention and thus did not meet the criteria for reporting to Licensing as they were documentation issues."

[201] We accept the expert's view that this incident constitutes a "reportable incident". The expert's education, knowledge and broad experience in nursing, gerontology and healthcare administration and legislation render her assessment of what constitutes a reportable incident more reliable. Furthermore, her opinion in this instance is more consistent with common knowledge that prolonged use of any prescription medication against the specific medical instructions given could be dangerous and therefore adverse to a person's health and safety.

[202] Even if the Appellant were correct in her interpretation that this incident is not "adverse" enough to be reportable, it would not change our conclusion that the incident exposed the person in care to significant risk of harm. That the person in care in this incident might not have shown symptoms of overdose or serious adverse side effects is fortunate. That it might not be evident that he suffered actual harm does not change the fact that the failure to remove the nitroglycerin transdermal patch according to the physician's instructions exposed the person in care to real risk of harm.

Sanitation

[203] The Appellant had admitted to Licensing on March 28, 2012 that:

- she had no garbage bags for the garbage cans because staff would go through them very fast, and
- the washcloths were reused for peri-care and not washed in between uses.

[204] The Appellant's practices of: (1) not lining some of the garbage cans before waste including used incontinence pads were thrown into them, and (2) enabling

¹⁰ section 77 and Schedule D of the Regulations

peri-cloths to be reused without washing in between uses, are unsanitary. Lack of sanitation poses a real risk of harm to the health and safety of the elderly residents who are more vulnerable and prone to disease and infection.

[205] Regarding these practices, Dr. Stanwick testified as follows:

. . . Infection control is probably one of the most important supporting services that health care institutions rely on to ensure health and safety of their residents. And the actions of the manager really speak to, you know, a lack of appreciation of the seriousness of conducting business in this fashion.

And I will reveal -- I wouldn't say it's a bias but certainly a perspective. In 2009, I was actually commissioned to do a special report for our Health Authority on the whole issue of C difficile in hospital as well as outside of hospital and speaking to how critical these germs are in terms of disrupting our efforts to provide care. And it's not only the in-hospital acquired infections but, in fact, this organism is often brought from the community and where else but our residential care facilities to our -- our hospitals. And so in terms of dealing with and controlling infection, our residential care facilities are an extension of a larger system. And it's only as good as its weakest link.

And so steps have to be taken to make sure that you basically minimize the spread of whether it's -- you know, basically Methicillin-resistant staph, C difficile; in fact, there's now a super C difficile that's circulating. And these are the sorts of things where everyone has a role to ensure. And the Act speaks specifically to making sure that we treat hazardous material. And basically throwing materials into basically unlined garbage cans, it just, you know, is absolutely unacceptable. And the re-use of peri cloths, you know, the issue is even though it was used on the single individual -- and I don't know if we want to really get into a description of urinary tract infections of which there were many documented in this report. The female genital tract, without getting into too much detail, is the tube between the bladder and the outside is short. And women are prone to more infections. And you try to keep that area as clean as possible. And taking a cloth that has been used for bowel movement and then smearing that in that general area is -- would basically be absolutely unacceptable practice by a family practitioner let alone a urologist.

So these practices were not only bad for the system; these were not -- these were bad for the individual. These were bad practices. And the individual should have had some awareness of -- you know, in terms of why we basically require this.

Garbage Cans

[206] As noted above, the Appellant admitted during her March 28, 2012 interview with licensing officers Janet Partaik and Lisa Grant that “she had no garbage bags for the garbage cans because staff would go through them very fast.”

[207] In her June 18, 2012 response to the summary of apparent findings, the Appellant indicated that when she made the admissions earlier she “did not realize that Licensing was viewing her as appearing to lack knowledge of basic sanitation as not once did any [licensing officer] ever mention this other than to simply view whether the garbage cans had bags or not . . .”

[208] We acknowledge that the Appellant may not have realized that her knowledge of basic sanitation was being tested when she made the admissions she did in March 2012. Nonetheless, that does not change or excuse the fact that some garbage cans containing infectious hazardous materials were unlined.

Peri Cloths

[209] Regarding the re-use of peri cloths, some staff had complained that the Appellant instructed them to reuse peri cloths as they could not be laundered every day. A licensing officer found a wet brown peri cloth on one resident’s bathroom sink. The Appellant admitted during her March 28, 2012 interview with licensing officers Janet Partaik and Lisa Grant that the washcloths were reused for peri-care and not washed in between uses.

[210] The Appellant in her reply argument denied that she had ever instructed staff to reuse peri cloths without washing them between uses. She explained that while only two staff members, Jessica Jupp and Patricia Close, could have reused peri cloths, others did not. She also explained that person in care HH was left with a peri cloth at her own request that she used and reused.

[211] Even according to her latest version of events, there was unquestionably a practice of allowing peri cloths to be reused on the same person in care without washing and disinfection in between uses. The Appellant’s accusation that Jessica Jupp could have been one of two employees who engaged in this practice is consistent with Jessica Jupp’s own admission in March 2012. The Appellant admitted that person in care HH was supplied with a peri cloth which she could use and reuse. So this highly unsanitary practice had been adopted by at least one employee and one person in care at JCM.

[212] The fact that the person in care requested that a peri cloth be left for her is not an excuse. It is not defensible for the Appellant to leave this person in care with a peri cloth knowing that she might be reusing it without proper cleaning. The fact that the practice might not have been widely adopted is of little comfort: a single unsanitary act is enough to start the spread of infection that could have dire consequences in a home for those who are already susceptible to disease. This practice exposes the health and safety of persons in care to significant risk of harm.

[213] On the issue of susceptibility to infection, the Appellant points out in reply argument that the elderly residents in long term care facilities are prone to urinary tract infections due to chronic illness and age. The Appellant added that urinary tract infections in long term care facilities are not uncommon but then asserts “the

[urinary tract infections] present at the home during the spring of 2012 were not issue around lack of sanitation within the home or with the procedures used by the staff".

[214] For the Appellant to definitively deny that the urinary tract infections were caused by lack of sanitation at JCM when she suspected that two employees and knew that one person in care reused unwashed peri cloths is worrisome. The Appellant's denial reveals an inability to appreciate that the unsanitary practice of reusing unwashed peri cloths increases the risk of urinary tract infections and that increasing the risk of urinary tract infections in a population already prone to the disease is a categorical failure to promote the health and safety of the persons in care.

[215] While there is no evidence of what actually caused the urinary tract infections that some persons in care at JCM suffered, there will always be a question of whether the infections are the result of the unsanitary practice of reusing unwashed peri cloths. There will always be a question of whether these are incidents where the unsanitary practice not only increased the risk of harm but caused actual harm to persons in care.

Regard for Dignity of Persons in Care

Peri-Care

[216] The Appellant denied that the practice of using showerheads for peri-care was universally used for all residents. There is evidence that at least one care aide stopped using this method on a person in care who became upset by this method of peri-care.

[217] We agree with the Appellant that this practice was not used "universally". The practice was not used on all persons in care because at least one care aide exercised good judgment and stopped using this method when a person in care started to cry.

[218] From the time that the Appellant was first interviewed by Licensing on this practice until the submission of her reply argument in this proceeding, she vigorously defended this practice. In her interview during the Investigation she defended this practice as being "cleaner" and leaving "no soap residue." In her closing argument in the appeal proceeding she described this method of peri-care as being superior to what the Appellant called "the standard peri-care system."

[219] In June 2012 the Appellant submitted to Licensing a written "Bidet Shower Head Training policy". That policy does not tell staff that: (1) alternatives must be made available or offered to the residents; (2) what the alternatives are; or (3) how to use the alternatives. The Appellant has not produced any other written policy to train staff in alternative methods of peri-care.

[220] The failure of the training policy to include alternatives for peri-care demonstrates: (1) a lack of consideration for the preferences of the persons in care, (2) insufficient regard for the dignity of persons in care, and (3) an inadequacy in training provided to staff.

Restrictive Visitors' policy

[221] Section 57(2) of the Regulation requires a licensee to, to the greatest extent possible, ensure that a person in care may

- (a) receive visitors of the person in care's choice at any time, and
- (b) communicate with visitors in private.

[222] The Appellant implemented a restrictive visitor policy which she defended as necessary to protect resident OS from financial abuse. She drew the Panel's attention to her duty to protect persons in care from financial abuse under section 52(1)(a) of the Regulation. However, there was no evidence of financial abuse or of the resident's need for the Appellant's intervention.

[223] The Care Records included in Exhibit 16D which the Appellant introduced and referred to during examination-in-chief contained the following note from OS' physician Dr. Shafansky regarding his Feb 14, 2012 visit:

Patient is reading a history book this point and follows current affairs. He was able to give me the correct name of the prime minister of Canada today and appears quite well orientated.

...

Assessment this amazing gentleman is in excellent health for his age he is remarkable he's alert he is breathing well has no history to support concerns at this point.

[224] OS told staff at JCM that he enjoyed the company of those two visitors.

[225] If the Appellant had concluded that the person in care was being financially abused, then she had an obligation to report the incident to Licensing. Her failure to do so is a contravention of section 77 of the Regulation which requires a licensee to report incidents where a person in care is the subject of financial abuse. If she did not have evidence of financial abuse, then she should not have restricted the person in care's right to receive visitors. Her having done so without evidence of abuse is a violation of section 57(2) of the Regulation.

Family and Resident Council

[226] Section 59 of the Regulation requires a licensee to establish a council to represent the interests of the persons in care and to regularly meet with the council to promote the interests of the persons in care and involve them in decision making on matters affecting their day to day living.

[227] The Appellant admitted that until March 2012 she did not understand the requirement to have a formal council structure to meet with residents and their family/representative/contact person.

Conclusion re: dignity

[228] The Appellant's failure to establish a family and resident council and implement an organized process to receive complaints and hear concerns, her pericare and restrictive visitors' policies lead us to conclude that she does not show sufficient regard for the dignity and rights of the patients placed in her care. At times, she seems unable or unwilling to view matters from the perspective of the

vulnerable residents who are dependent on her to provide care and for whom JCM is home.

Non-Compliance

Breach of Direction

[229] The Appellant twice changed the Health and Safety Plan she had submitted to Licensing without prior approval. That is a breach of the specific direction Licensing had given that the plan was not to be amended without first obtaining Licensing's approval.

Breach of Licence Condition

[230] At the time of the Investigation in March 2012, JCM was subject to the 2008 Conditions which prohibited the Appellant from housing non-ambulatory persons in care and those who did not have the physical ability to exit the building independently. During the Investigation, the Appellant admitted to Licensing that resident HH, along with two other residents, was physically unable to exit the building.

[231] At the hearing, however, the Appellant recanted her admission regarding person in care HH and insisted HH was ambulatory and did not need assistance to exit the building.

[232] Even if HH were ambulatory, the Appellant had breached the conditions of her licence because there were two other persons in care who were physically unable to exit the building.

Appellant's judgment

[233] The Appellant's testimony regarding how she had now arrived at the conclusion that HH was in fact physically able to exit the building independently raises concerns about her ability to assess the needs of a person in care.

[234] When cross-examined on how she had come to change her assessment of HH's mobility, she explained that at the time of her interview in March 2012 she had not seen HH and thought incorrectly that HH could not exit the building independently. However, on review of the nursing progress notes and the daily flow sheets on HH, she is now of the view that HH was clearly able to exit the building.

[235] The Appellant had earlier introduced into evidence nursing progress notes on HH which contained the following entries:

- Entry on March 7, 2012 - records that HH was brought in on a stretcher and got off with a one-person assist.
- Entry on March 13, 2012 – records that "she ambulates well with a walker and supervision. Assistance is given to lift feet into bed."
- Entry on March 16, 2012 – records "Client was not ambulatory tonight except to use the bathroom. Difficult to say how gait & balance – got herself into bed. Called writer x2 to help her retrieve book & sort out bed covers."

- Entry on March 18, 2012 – records “walked with walker and supervision. Limp noted . . .”
- Entry on March 22, 2012 – records that HH moved with “supervisory assist and walker.

[236] When asked by counsel for the Respondent whether, in light of the above entries, she agreed that HH needed assistance to walk, the Appellant replied that HH “needed assistance mainly for reassurance. She had no physical. She had no broken limbs or anything.” Questioned further on whether the progress notes are wrong where they recorded the instances where HH needed assistance, the Appellant replied: “She wanted. There’s a difference, wanting assistance and needing assistance. There’s a difference.” The Appellant was quick to add that if HH requested assistance, “we’re not gonna say, ‘No, we’re not gonna help you.’ It’s automatic.”

[237] The nursing progress notes on HH and the Appellant’s testimony do not support a conclusion that HH was physically able to exit the building independently. On the contrary, they lead conclusively to a finding that HH could not be counted on to exit the building independently at all times including at times of emergencies.

[238] That the Appellant could arrive at the opposite conclusion from reviewing those notes shows questionable judgment and a lack of perspective when assessing the needs of residents placed in her care. That she draws some distinction between a resident “wanting” versus “needing” care is very disturbing. When an elderly person is unable to exit a building on fire, it makes no difference whether that inability is the result of a visible broken limb or a hidden impaired mind.

[239] That the Appellant would determine a person in care in this condition to be physically able to exit the building has worrisome implications: if her assessment of the conditions and needs of the persons in care are wrong, her management decisions such as staffing levels would also be wrong. Such errors expose the health, safety and dignity of persons in care to unacceptable risk of harm.

Conclusion on Issue 5

[240] Based on the evidence and facts, we conclude that the Appellant has contravened a number of regulations and the most fundamental and important breach she committed is the violation of section 7 of the Act which requires her to operate JCM in a manner and at a standard that promoted the health, safety and dignity of persons in care. We find that the Appellant operated JCM in a manner that failed to promote the health, safety and dignity of persons in care. In fact, we find that there were instances where JCM’s operations created risk of harm to the elderly placed in her care.

[241] The unsanitary practices adopted are inexcusable. They demonstrate a woeful lack of knowledge of basic hygiene and disregard for infection control.

[242] As for staffing, while it is a legitimate staffing strategy to meet changing needs with short term contract staff, that strategy was inadequate and unsuitable for JCM’s operation because it left them chronically understaffed. Furthermore, it was irresponsible to implement a strategy that would result in a steady stream of new staff without a correspondingly more robust training program and more vigilant

staff supervision. The Appellant failed to discharge basic management responsibilities.

[243] The deficient record keeping practices at JCM further compounded the problem: a flow of overworked, undertrained and poorly supervised staff combined with the lack of accurate care documentation to inform care providers of the conditions of the persons in care turned the facility into a breeding ground for errors. And at JCM, errors did occur that exposed the health, safety and dignity of its residents to not only risk of harm but to actual harm.

Issue 6 - The Appellant's Character and Skills – Suitability to be Manager

[244] The Regulation provides as follows:

Character and skill requirements

37 (2) A licensee must not employ a person in a community care facility unless the licensee is satisfied, based on the information available to the licensee under subsection (1), that the person

. . .

(b) has the personality, ability and temperament necessary to manage or work with persons in care, and

(c) has the training and experience and demonstrates the skills necessary to carry out the duties assigned to the manager or employee.

Skills

[245] The fact that JCM has been operated in a manner that exposed the health, safety and dignity of persons in care to such an extent of risk while under the Appellant's management indicates a lack of the skills necessary to carry out the duties of manager.

Personality

[246] As for whether the Appellant has the personality, ability and temperament to properly manage JCM, we have concluded that she does not.

[247] A review of her compliance history shows that contraventions similar to those found in this hearing have occurred in the past. This compels a closer examination of whether the underlying cause of the contraventions is the Appellant's suitability to be a manager.

[248] The strongest indicators that she does not have the personality, ability and temperament required of a manager were revealed during her testimony at the oral hearing. At times, the defenses she raised to the alleged contraventions were more disturbing than the allegations they were meant to counter. At times, her responses showed a dismissive attitude, a tendency to blame others and a profound lack of basic knowledge about the current standards expected of health care providers. These attributes could be the root cause of the contraventions.

Lack of Knowledge

[249] The Appellant as a manager of a long term care facility did not know:

- what Task 2 training was;
- if the nutrition care plans were completed as required by section 81(3) of the Regulation;
- that the housekeeper had provided direct care to persons in care without training;
- that a record of complaints had to be kept and an effective complaint process implemented; or
- a resident and family council had to be established.

[250] Regarding admissions of persons in care into a community care facility, Section 47(1) of the Regulation requires a licensee to screen any potential person in care before admission to ensure that safe and adequate care can be provided. The Appellant did not know:

- if assessment forms had been developed for new admissions: "That was the nurse's responsibility";
- if VS, person in care, had been assessed by a nurse prior to admission; but she did know that there had been no assessment after admission; and
- if resident JB had an assessment completed after admission.

[251] Further, the Appellant did not know that menus had to be displayed. Even when she posted the menus, she did not follow them. She made substitutions without record.

[252] She did not know that the actual time that medication is given to persons in care must be recorded in the medication administration record. Not only is that important information not recorded in the medication administration record as required by regulation, it is not recorded anywhere.

[253] From the following discussion between the hearing Panel Chair and the Appellant, she seemed surprised that it was a requirement to record the time that medication is administered to a person in care:

THE CHAIR: So, am I to understand from that that there is no record kept that would reflect both the time that the dosage was meant to be taken, the amount prescribed, and presumably a confirmation that, in fact, that dosage had been administered at the appropriate time? That would seem to me to be a fairly routine matter of charting.

A. But it's not. It's -- it's not -- it's not.

[254] The Appellant did not know enough about her own operations. She told Licensing during the Investigation that she had no idea what happened "out there [on the floor]".

[255] She did not know what records kept by her staff meant. Her testimony about whether a checkmark meant that a shower had been given to a person in care is an example:

THE CHAIR: Does a tick mean she has a shower or not?

A That's what I asked myself. Before there are lots of ticks and they say nothing.

MR. CHAN: Right, yeah.

A I think it means nothing because --

THE CHAIR: So --

A -- the shower is entered.

MR. CHAN: Yeah.

THE CHAIR: So she was being showered once a week?

A Yes.

MS. DEL VAL: So this is -- so, at this time the -- this is 2011 when you were still the manager --

A Yes.

MS. DEL VAL: -- of Joan Crescent Manor? How is it that you wouldn't know what a checkmark means if you're the manager?

A Well, I didn't put this in. This was the RN that developed this system and she was supervising it, and it -- and it doesn't matter to me as long as the information is what we're looking for.

THE CHAIR: But if you can't interpret it how do you make any sense of it?

A Well, lots of things I can't make sense of it, but, anyway. I can't -- I can't --

THE CHAIR: All right.

A Maybe they don't want it to look blank, I don't know.

Refusal to accept responsibility

[256] The Appellant apparently believes that she should not be held responsible for the failure to discharge duties delegated to or shared with staff.

[257] At the hearing, on behalf of the Appellant Mr. Blumenschein submitted that "One of the assertions is that [the Appellant] has directed all aspects of care and we're certainly bringing into evidence that that is not true and that the team is working together and making decisions together. . ."

[258] The Appellant testified to taking an integrated team approach to providing care. That may be so but that is not a defence to her failure to discharge her duties as manager. As manager, the Appellant is the leader of the team and as such is ultimately responsible and accountable for the overall operations of JCM.

[259] The Appellant is an intelligent, articulate and strong minded woman with an exceptional ability and propensity to rationalize. Her opinions, once formed, appear practically impossible to sway even by evidence or logic.

[260] She often appears unable to understand the underlying purpose of regulatory requirements to protect persons in care and the importance of compliance. She sometimes displays a dismissive attitude and believes that measures she has in

place at JCM are adequate and that she should not be expected to do more given the small size of JCM's operations.

[261] At times, she is quick to deflect blame e.g. care plans etc. are the responsibility of the health professionals like the RNs; medication administration records are the responsibility of the pharmacists; missing staff records are the responsibility of staff who failed to produce them. She believes that the chaos of JCM is the result of VIHA's investigation and actions and feels she has been persecuted and victimized by VIHA and disgruntled ex-employees.

[262] At the end of the 11 day hearing, when Panel member Tung Chan asked the Appellant whether there was anything more she wanted to say for the Panel's benefit, she described how upset and overwhelmed she felt and summed up her sentiments as follows:

. . . all I can say, the way I've experienced it must have been the way that Jews experienced it when the Nazis went and smashed all their windows, then asked the Jews to go and clean it up and pay for the windows. That's how it feels to me.

Conclusion re: The Appellant's suitability

[263] Knowledge can be acquired and we believe that the Appellant has the intelligence to learn what she must to manage JCM as required by law. Her work ethic is remarkable and it is unlikely that she would be daunted by the hard work that is needed to update her skills and knowledge.

[264] Unfortunately, we find that her ability to learn and change is severely hampered by a profound sense of denial that the care home of which she is so proud and to which she has dedicated so much of her life has fallen so far short of acceptable standards. She feels gravely wronged by all those who played a part in proving the allegations of non-compliance against her. The resentment she and her family harbor towards the authorities and the complainants was palpable throughout the proceeding.

[265] Those emotions create virtually unsurmountable obstacles to learning, changing and improving, and until they subside and she accepts responsibility, we must conclude that the Appellant does not have the character and skills required to be the manager of JCM.

Issue 7 – Is each of the New Conditions justified?

[266] After considering the evidence and facts, and our conclusions under issues 5 and 6 above, we will now consider the appropriateness of each of the individual New Conditions attached to the licence.

[267] Is Condition 1 justified? Yes, it is because the Appellant has not managed JCM's operations as required by law and does not currently have the ability and aptitude to do so.

[268] Condition 2 is justified because it is necessary to install a manager once the Appellant has been removed as manager. This condition also enables the Appellant to hire a manager who is not an RN. Requiring that the manager be first approved by Licensing is justifiable because vigilant monitoring is necessary given: (1) the chaotic state of affairs at JCM in the period leading up to and immediately following the Appellant's removal as manager; and (2) the fact that JCM was then an active operation with up to 7 persons in care whose care needs were complex. Requiring that there be a manager on site 35 hours a week is also justifiable for a 24 hour operation that is staffed by many new workers and that is in need of substantial corrective measures.

[269] Conditions 3, 5 and 6 regarding the requirements of an RN are justified given the complex care needs of the persons in care at JCM.

[270] Condition 4 is for the benefit of the Appellant as it allows her to apply the hours of the manager towards satisfying the requirements of Condition 3 in the event that the new manager is also a qualified RN.

[271] Condition 7 was imposed after consultation with and on advice of the fire department. We defer to the expertise of the fire officials and find this condition justified.

DECISION

[272] As required by section 29(11) of the Act, the hearing Panel has conducted the proceeding as if it were a decision of the first instance: we have received and considered evidence and argument and undertaken our own analysis.

[273] In making this decision, the Panel has carefully considered all of the evidence before it and the submissions and arguments made by each of the parties, whether or not they are specifically referenced in these reasons.

[274] We have reached the conclusions based on the findings of fact set out in these reasons. The evidence to which we assigned the most weight in arriving at the conclusions is the testimony and demeanor of the Appellant at the hearing and the documentation from JCM regarding its operation and the care delivered to its residents.

[275] We acknowledge that the Appellant takes great exception to Gillian Baird's October 6, 2013 expert report and attacks almost all aspects of the report including the expert's motive and credibility. Because the Appellant is so antagonized by the expert report, it may be helpful to discuss how we have used the expert report in the proceeding and in making this decision. We found the expert report helpful in organizing into one relatively short report a few of Licensing's findings regarding staffing, medication administration and care plans which findings were scattered through Licensing's very lengthy Report. The Panel was grateful to have the expert report as an index and guide of where to look in the Report when we needed to verify certain evidence and facts. The Appellant should know, however, that we would have come to the same conclusions with or without the expert's opinion.

[276] We also acknowledge that there are additional issues and findings of fact on which Licensing and Dr. Stanwick based their own conclusions and some of those

findings, for example the one on emotional abuse, were offensive to the Appellant. Those matters are not dealt with here because it was not necessary for us to make any findings of fact further than what we have already done to come to the conclusions reached.

[277] For all the reasons stated above, and on considering all the issues raised in this appeal, the Panel finds that the Appellant has not met the burden under section 29(11) of the Act of proving that that the Decision was not justified. Accordingly, under section 29(12) of the Act, the Panel confirms the Respondent's decision to place conditions on the Appellant's licence to operate JCM. The appeal is dismissed.

"Richard Margetts"

Richard Margetts, Q.C.
Panel Chair

"Helen del Val"

Helen Ray del Val,
Chair

"Tung Chan"

Tung Chan,
Member

December 17, 2014

APPENDIX 1**Excerpts from the Acts and Regulations referenced** (current to Nov 2014)***Community Care and Assisted Living Act, [SBC 2002] Chapter 75*****Standards to be maintained**

7 (1) A licensee must do all of the following:

(a) employ at a community care facility only persons of good character who meet the standards for employees specified in the regulations;

(b) operate the community care facility in a manner that will promote

(i) the health, safety and dignity of persons in care, and

(ii) in the case of adult persons in care, the rights of those persons in care

...

(d) appoint a manager for the community care facility.

Duties of the medical health officer

15 (1) Within the area for which he or she is appointed, a medical health officer must. . .

(b) investigate every complaint that

...

(ii) a community care facility is being operated that does not fully comply with this Act, the regulations or the terms or conditions of its licence,

(c) carry out inspections of any community care facility that is being operated, and ...

(2) A medical health officer may continue and complete an investigation of a licensee or a former licensee after

(a) the licence has expired or been cancelled or suspended, or

(b) the licensee has surrendered the licence.

Appeals to the board

29 (1) The Community Care and Assisted Living Appeal Board is continued consisting of individuals appointed after a merit based process . . .

(1.2) Sections 1 to 20, 22, 24 to 42, 44, 46.2, 47 (1) (c) and (2), 48 to 55, 57, 58, 60 and 61 of the *Administrative Tribunals Act* apply to the board.

(2) A licensee, an applicant for a licence, a holder of a certificate under section 8, an applicant for a certificate under section 8, a registrant or an applicant for registration may appeal to the board in the prescribed manner within 30 days of receiving notification that

- (a) the minister has appointed an administrator under section 23,
- (b) a medical health officer has acted or declined to act under section 17 (3) (b),
- (c) the registrar has acted or declined to act under section 28 (3) (b), or
- (d) a person has refused to issue a certificate, suspended or cancelled a certificate or attached terms or conditions to a certificate under section 8. . .

(5) The person whose action described in subsection (2) is being appealed is a party to the appeal proceedings.

. . .

(11) The board must receive evidence and argument as if a proceeding before the board were a decision of first instance but the applicant bears the burden of proving that the decision under appeal was not justified.

(12) The board may confirm, reverse or vary a decision under appeal, or may send the matter back for reconsideration, with or without directions, to the person whose decision is under appeal.

Administrative Tribunals Act, [SBC 2004] Chapter 45

Examination of witnesses

38 (1) Subject to subsection (2), in an oral or electronic hearing a party to an application may call and examine witnesses, present evidence and submissions and conduct cross examination of witnesses as reasonably required by the tribunal for a full and fair disclosure of all matters relevant to the issues in the application.

(2) The tribunal may reasonably limit further examination or cross examination of a witness if it is satisfied that the examination or cross examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the application.

Residential Care Regulation, B.C. Reg. 96/2009**Character and skill requirements**

37 (1) A licensee must not employ a person in a community care facility unless the licensee or, in the case of a person who is not the manager, the manager has obtained all of the following:

- (a) a criminal record check for the person;
- (b) character references in respect of the person;
- (c) a record of the person's work history;
- (d) copies of any diplomas, certificates or other evidence of the person's training and skills;
- (e) evidence that the person has complied with the Province's immunization and tuberculosis control programs.

(2) A licensee must not employ a person in a community care facility unless the licensee is satisfied, based on the information available to the licensee under subsection (1), that the person

- (a) is of good character,
- (b) has the personality, ability and temperament necessary to manage or work with persons in care, and
- (c) has the training and experience and demonstrates the skills necessary to carry out the duties assigned to the manager or employee.

Continuing health of employees

39 (1) A licensee must not continue to employ a person in a community care facility who does not provide to the licensee evidence of continued compliance with the Province's immunization and tuberculosis control programs.

Continuing monitoring of employees

40 (1) A licensee must ensure that the performance of each employee is reviewed both regularly and as directed by the medical health officer under subsection (2) to ensure that the employee

- (a) continues to meet the requirements of this regulation, and
- (b) demonstrates the competence required for the duties to which the employee is assigned.

. . .

- (3) A licensee must not permit an employee to carry out any duties for which the employee does not have the necessary training and experience or demonstrate the necessary competence.

Staffing coverage

- 42** (1) A licensee must ensure that, at all times, the employees on duty are sufficient in numbers, training and experience, and organized in an appropriate staffing pattern, to

- (a) meet the needs of the persons in care, and
- (b) assist persons in care with activities of daily living, including eating, mobility, dressing, grooming, bathing and personal hygiene, in a manner consistent with the health, safety and dignity of persons in care.

Admission screening

- 47** (1) Before admitting a person to a community care facility, a licensee must screen the person to ensure the person will receive both safe and adequate care if admitted to the community care facility.

- (2) A licensee must consider, as part of the screening process under subsection (1), all of the following:

- (a) the training and experience of employees, the number of employees and patterns of employee coverage;
- (b) the design of the community care facility, its construction, and the facilities and equipment within the community care facility;
- (c) the needs of the person, including any needs that should be identified specifically in a care plan;
- (d) the health, safety and dignity of other persons in care;

(e) any criteria set by, or advice or information from, a funding program.

Emergency preparations

51 (1) A licensee must have

(a) an emergency plan that sets out procedures to prepare for, mitigate, respond to and recover from any emergency, including procedures for the evacuation of persons in care, and

(b) a plan that sets out how persons in care will continue to be cared for in the event of an emergency.

(2) A licensee must ensure that the plans described in subsection (1) are updated if there is any change in the facility.

(3) A licensee must ensure that each employee is trained in the implementation of the plans described in subsection (1), including in the use of any equipment noted in the plan.

(4) A licensee must display a copy of the emergency plan in a prominent place in the community care facility.

(5) A licensee must ensure that all employees have access, in an emergency, to reliable communications equipment.

Harmful actions not permitted

52 (1) A licensee must ensure that a person in care is not, while under the care or supervision of the licensee, subjected to

(a) financial abuse, emotional abuse, physical abuse, sexual abuse or neglect as those terms are defined in section 1 of Schedule D, or

...

Access to persons in care

57 (2) A licensee must, to the greatest extent possible while maintaining the health, safety and dignity of all persons in care, ensure that a person in care may

(a) receive visitors of the person in care's choice at any time, and

(b) communicate with visitors in private.

Family and resident council

59 A licensee must provide an opportunity, at least annually, for persons in care and their parents or representatives, family members and contact persons to

(a) establish one or more councils or similar organizations to represent the interests of the persons in care, or their parents or representatives, family members and contact persons, or both, and

(b) meet with the licensee, either as a council, or, if no council is established, as a group, for the purpose of

(i) promoting the collective and individual interests of the persons in care, and

(ii) involving the persons in care in decision making on matters that affect their day to day living.

Dispute resolution

60 A licensee must

(a) establish a fair, prompt and effective process for persons in care and their parents or representatives, family members and contact persons to express a concern, make a complaint or resolve a dispute,

...

Menu planning

62 (1) A licensee must ensure that a menu, made in accordance with this section, is developed. . .

(b) in any other case, for at least each 4 week period.

...

(4) A licensee who provides a type of care described as Long Term Care must display in a prominent place in each dining area the menu for each weekly period.

Administration of medication

70 (1) A licensee must ensure that only medications that have been prescribed or ordered by a medical practitioner or nurse practitioner are administered to a person in care.

(2) A licensee must ensure that employees who store, handle or administer medication to persons in care

. . . .

(b) have successfully completed any training programs established by the medication safety and advisory committee.

Reportable incidents

77 (1) For the purposes of this section, a person in care is involved in a reportable incident if the person in care

(a) is the subject of

(i) a reportable incident, or

(ii) in the case of reportable incidents of emotional, physical, financial or sexual abuse, or neglect, an alleged or suspected reportable incident, or

(b) witnesses a reportable incident.

(2) Subject to subsection (3), if a person in care is involved in a reportable incident, the licensee must immediately notify

(a) the parent or representative, or contact person, of the person in care,

(b) the medical practitioner or nurse practitioner responsible for the care of the person in care,

(c) a medical health officer, in the form and in the manner required by the medical health officer, and

(d) the funding program, if any.

Records for each person in care

78 (2) A licensee must keep, for each person in care, a medication administration record showing

- (a) all medication administered to the person in care, and
- (b) the date, amount and time at which the medication was administered.

Care plan needed if more than 30 day stay

81 (1) If a person in care is admitted to the community care facility for a period of more than 30 days, a licensee must ensure that a care plan for the person in care is made in accordance with this section within 30 days of admission.

...

- (3) A care plan must include all of the following:
 - (a) a plan to address
 - (i) medication, including self-administered medication if approved under section 70 (4) [*administration of medication*],
 - (ii) behavioural intervention, if applicable, and
 - (iii) if there is agreement to the use of restraints under section 74 (1) (b) [when restraints may be used], the type or nature of restraint and the frequency of reassessment;
 - (b) an oral health care plan;
 - (c) a nutrition plan that
 - (i) assesses a person in care's nutrition status, and
 - (ii) specifies the nutrition to be provided to the person in care, including the requirements of any therapeutic diets;
 - (d) a recreation and leisure plan;
 - (e) in the case of a person in care who receives a type of care described as Long Term Care or who may be prone to falling, a fall prevention plan, which must address
 - (i) an assessment of the nature of the risk of falling presented by the person in care,
 - (ii) a plan for preventing the person in care from falling, and

(iii) a plan for following up on any falls suffered by a person in care;

...

(4) A licensee must ensure that

(a) the implementation of each care plan is monitored on a regular basis to ensure proper implementation,

(b) each care plan is reviewed and, if necessary, modified

(i) if there is a substantial change in the circumstances of the person in care, or

(ii) if there is no substantial change in the circumstances of the person in care, at least once each year

to ensure it continues to meet the needs and preferences, and is compatible with the abilities, of the person in care who is the subject of the care plan, and

(c) to the extent reasonably practical, persons in care participate in the review and modification of their own care plans.

Implementation of care plans

82 A licensee must ensure that the care and supervision of a person in care is consistent with the terms and conditions of the person in care's care plan.

Nutrition plan

83 (1) A licensee of a community care facility with 24 or fewer persons in care must

(a) develop a nutrition plan for each person in care, and

(b) if a nutrition plan is developed without the assistance of a dietitian, ensure that reasonable steps are taken to assess the specific nutritional needs of the person in care who is the subject of the nutrition plan, including considering whether the person in care is at risk of being inadequately nourished because of

(i) a physical or mental condition,

(ii) a history of issues that affect eating by the person in care, or

(iii) any other relevant factor.

...

Policies and procedures

85 (1) A licensee must do all of the following:

(a) have written policies and procedures for the purposes of guiding staff in all matters relating to the care and supervision of persons in care;

(b) review and, if necessary, revise the policies and procedures at least once each year;

(c) make all policies and procedures available

(i) to employees at all times,

(ii) to a medical health officer on request,

(ii.1) to a person in care on request, and

(iii) the parent or representative of a person in care on request;

(d) ensure that policies are implemented by employees.

(2) Without limiting subsection (1) (a), a licensee must have written policies and procedures in respect of all of the following:

(a) if the licensee provides a type of care described as Long Term Care, fall prevention, including

(i) an assessment of the nature of the risks that may result in persons in care falling in the community care facility,

(ii) a plan for preventing persons in care from falling, and

(iii) a plan for responding to a fall suffered by a person in care, including steps to be taken to ensure the health and safety of the person in care who has fallen and to prevent subsequent falls by the person in care;

(b) the orientation of new managers and employees, including orientation respecting the policies and procedures of the community care facility, the regulations and the Act;

- (c) the continuing education of managers and employees;
- (d) how persons in care, their parents or representatives and contact persons may express concerns, make complaints and resolve disputes under section 60 [*dispute resolution*];
- (e) access to persons in care by persons who are not employees of the community care facility;
- ...
- (g) monitoring of the nutrition of a person in care;
- (h) monitoring of the medication of a person in care;
- ...
- (j) responding to reportable incidents;
- k) the steps to be taken if a person in care leaves, or may have left, the community care facility without notification of an employee;
- (l) the appropriate manner and schedule of record keeping.

(3) A licensee must keep a copy of each policy and procedure of the medication safety and advisory committee.

Records respecting employees

86 A licensee must keep the following records in respect of each employee:

- (a) criminal record check results;
- (b) character references;
- (c) compliance with the Province's immunization and tuberculosis control programs;
- (d) a record of any performance reviews made under section 40 [*continuing monitoring of employees*] and any attendance at continuing education programs.

Food services record

87 A licensee must keep a record of the following matters respecting food services:

...

(b) menus and menu substitutions;

. . .

Record of minor and reportable incidents

88 A licensee must keep a record of all of the following:

(a) minor accidents, illnesses and medication errors involving persons in care that do not require medical attention and are not reportable incidents;

(b) unexpected events involving persons in care;

(c) reportable incidents involving persons in care.

Record of complaints and compliance

89 (1) A licensee must keep a record respecting complaints made and concerns expressed to the licensee under section 60 [*dispute resolution*], and the responses to them.

(2) A licensee must keep records respecting the licensee's compliance with the following sections:

. . . (b) section 59 [*family and resident council*];

(c) section 66 [*individual nutrition needs*];

(d) section 70 [*administration of medication*].

Schedule D

[am. B.C. Reg. 205/2013, Sch. 2, ss. 1 and 2.]
(Section 77 [reportable incidents])

Reportable incidents

1 For the purpose of this regulation, any of the following is a reportable incident:

"aggression between persons in care" means aggressive behaviour by a person in care towards another person in care that causes an injury that requires

(a) first aid,

(b) emergency care by a medical practitioner or nurse practitioner,

or

"aggressive or unusual behaviour" means aggressive or unusual behaviour by a person in care towards another person, including another person in care, that

(a) has not been appropriately assessed in the care plan of the person in care, and

(b) is not aggression between persons in care within the meaning of this Schedule;

"attempted suicide" means an attempt by a person in care to take his or her own life;

"choking" means a choking incident involving a person in care that requires

(a) first aid,

(b) emergency care by a medical practitioner or nurse practitioner, or

(c) transfer to a hospital;

"death" means any death of a person in care;

"disease outbreak or occurrence" means an outbreak or the occurrence of a disease above the incident level that is normally expected;

"emergency restraint" means any use of a restraint that is not agreed to under section 74 [when restraints may be used];

"emotional abuse" means any act, or lack of action, which may diminish the sense of dignity of a person in care, perpetrated by a person not in care, such as verbal harassment, yelling or confinement;

"fall" means a fall of such seriousness, experienced by a person in care, as to require emergency care by a medical practitioner or nurse practitioner, or transfer to a hospital;

"financial abuse" means

(a) the misuse of the funds and assets of a person in care by a person not in care, or

(b) the obtaining of the property and funds of a person in care by a person not in care without the knowledge and full consent of the person in care or his or her parent or representative;

"food poisoning" means a food borne illness involving a person in care that requires emergency care by a medical practitioner or nurse practitioner, or transfer to a hospital;

"medication error" means an error in the administration of a medication which adversely affects a person in care or requires emergency intervention or transfer to a hospital;

"missing or wandering person" means a person in care who is missing;

"motor vehicle injury" means an injury to a person in care that occurs during transit by motor vehicle while the person in care is under the care and supervision of the licensee;

"neglect" means the failure of a care provider to meet the needs of a person in care, including food, shelter, care or supervision;

"other injury" means an injury to a person in care requiring emergency care by a medical practitioner or nurse practitioner or transfer to a hospital;

"physical abuse" means any physical force that is excessive for, or is inappropriate to, a situation involving a person in care and perpetrated by a person not in care;

"poisoning" means the ingestion of a poison or toxic substance by a person in care;

"service delivery problem" means any condition or event which could reasonably be expected to impair the ability of the licensee or his or her employees to provide care, or which affects the health, safety or dignity of persons in care;

"sexual abuse" means any sexual behaviour directed towards a person in care and includes

(a) any sexual exploitation, whether consensual or not, by an employee of the licensee, or any other person in a position of trust, power or authority, and

(b) sexual activity between children or youths,

but does not include consenting sexual behaviour between adult persons in care;

"unexpected illness" means any unexpected illness of such seriousness that it requires a person in care to receive emergency care by a medical practitioner or nurse practitioner or transfer to a hospital.

APPENDIX 2

2008 Conditions attached to licence to operate JCM

1. JCM will not provide housing to non-ambulatory persons in care.
2. Persons in care at this building must have the physical ability to exit the building independently.
3. Persons in care whose care needs deteriorate to a point that necessitates unscheduled professional nursing care on a long term basis will be required to move
4. Persons in care will only “age in place” at this site if they conform to points 1 – 3 above.
5. Items 1 – 4 may be precluded with a care plan and addition of staffing as deemed appropriate and approved by the Medical Health Officer.

2012 Conditions imposed on licence to operate JCM (“New Conditions”)

1. AMS will not direct any aspect of care provided to persons in care, and will not be the Manager.
2. Manager, approved by Licensing, is in place for a minimum of 35 hours per week on site to perform duties under the Community Care and Assisted Living Act including responsibility for the day to day operations of the facility.
3. Registered Nurse on site for a minimum of 15 hours per week, with a minimum of 2 hours per day.
4. If the Manager, approved by Licensing, is a Registered Nurse then his/her hours on site can be used towards meeting the requirements of condition 3.
5. Registered Nurse will be responsible for:
 - a. Making decisions regarding admission of new persons in care and the retention of those in care to ensure that persons in care will receive both safe and adequate care;
 - b. Supervising employees in the provision of care; and
 - c. Coordinating and monitoring the care of persons in care.
6. On call Registered Nurse coverage provided 24 hours per day, seven days a week.
7. Joan Crescent Manor will not provide housing to non-ambulatory persons in care.