

**PUBLIC HEALTH APPEAL BOARD**

**IN THE MATTER OF THE *PUBLIC HEALTH ACT*  
R.S.A. 2000 c. P-37 AND THE REGULATIONS**

**AND IN THE MATTER OF THE APPEAL OF THE ORDER  
OF AN EXECUTIVE OFFICER ISSUED BY ALBERTA  
HEALTH SERVICES, ZONE 3 July 26, 2024**

PANEL: Kevin Kelly, Chair  
Paul M. Bourassa, Member  
Dr. Theresa A. Chika-James, Member

BETWEEN:	)	
	)	
Charlotte Wagner.	)	
	)	
(Appellant)	)	
	)	
- and -	)	
	)	
ALBERTA HEALTH SERVICES	)	Sarah Nykolaishen,
	)	Alberta Health Services,
	)	for the Respondent
(Respondent)	)	
	)	
	)	
	)	Heard via Videoconference: September
	)	13, 2024
	)	
	)	
	)	

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**DECISION AND REASONS FOR DECISION**

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A notice of appeal (the “Notice of Appeal”) was served on the Public Health Appeal Board (the “Board”) on August 08, 2024, by Charlotte Wagner (the “Owner” and “Appellant”) with respect to a decision of an Alberta Health Services (“AHS”) Executive Officer (“EO”) for an order dated July 26, 2024 (the “Order”) concerning the housing premises located in Red Deer, Alberta and municipally described as: 3929 51A Street – Basement Suite (the “Premises”).

## The Appeal

[1] The Owner is appealing the Order for the Premises, which identified concerns with the dimensions of the bedroom windows being non-compliant with minimum egress requirements as they (the two windows in the basement) were measured at 12.6 inches by 16.5 inches.

## Board Decision

[2] The hearing for this appeal began and concluded on September 13, 2024. The Appellant and the Respondent made submissions and presented evidence. At the conclusion of the hearing, the Board informed the parties that it would provide its written decision within 60 days. For the reasons that follow, the Board is confirming the Order.

## Background

[3] The EO attended at the Premises on July 22, 2024. The Premises is a rental accommodation. During his inspection, the EO observed violations of the Minimum Housing and Health Standards, including lack of proper egress windows in the two bedrooms, mold on a wall, and improper weatherproofing of the front door.

[4] On July 23, 2024, the EO contacted the property manager of the Premises (the “Property Manager”) by phone. The EO advised the Property Manager that the Premises would have to be vacated in 10 days due to the size of the bedroom windows. The Property Manager confirmed that Charlotte Wagner is the owner of the Premises.

[5] The EO subsequently e-mailed the Property Manager on July 24, 2024, to provide a copy of the report arising from his inspection on July 22, 2024, and to advise that in the coming days he would be issuing a written order closing the Premises for tenant accommodation.

[6] The EO issued the Order pursuant to the *Public Health Act*, RSA 2000, c. P-37 (the “PHA”) and the Housing Regulation, Alberta Regulation 173/99 (the “Regulation”), and the Minimum Housing and Health Standards. The Order set out the contraventions of the PHA, Regulation and Minimum Housing and Health Standards as they pertained to the condition of the Premises. The EO ordered and directed the following:

1. That the occupants vacate the above noted premises on or before August 2, 2024.
2. That the Owner immediately undertake and diligently pursue the completion of the following work in and about the above noted premises, namely:
  - a. Repair the windows in the two bedrooms so they provide unobstructed openings with areas not less than 0.35m<sup>2</sup> (3.8ft<sup>2</sup>) and no dimension less than 380 mm (15”).
  - b. Ensure walls which have mold present are remediated as per current accepted guidelines.

c. Ensure the front door weatherstripping is repaired or replaced.

3. That until such time as the work referred to above is completed to the satisfaction of an EO of Alberta Health Services; the above noted premises shall remain closed for tenant accommodation purposes.

[7] On August 1, 2024, the EO emailed the Property Manager to provide a copy of the Order. The EO also attended the Premises to post a notice advising that the Premises was closed for tenant accommodation.

[8] The EO had “used measurements required for new developments, not existing legalized secondary suites” during his inspection. The Owner asked the EO to “rectify [his] report to account for the age of the home”. The Owner attached a copy of an Occupancy Permit issued by the City of Red Deer in 2011 to her email.

[9] On August 5, 2024, the Owner emailed the EO to advise that the former tenant had moved out of the Premises before the end of July 2024, and to provide an update with respect to repair work that had been done to the Premises.

[10] On August 7, 2024, the EO contacted Assistant Fire Marshal Shane Dussault (“Marshal Dussault”) from Red Deer Emergency Services to request a joint inspection of the Premises to confirm whether the bedroom windows meet applicable requirements for egress.

[11] The EO and Marshal Dussault conducted their joint inspection on August 7, 2024. During the inspection, Marshal Dussault ascertained that the bedroom windows do not meet the requirements of the National Building Code – Alberta Edition. Also on August 7, 2024, the EO contacted the Owner to advise her of the results of his joint inspection with Marshal Dussault.

[12] On August 8, 2024, the Owner served on the Board the Notice of the Appeal concerning the Order.

### **Timing of the Appeal**

[13] Section 5(3) of the Act requires the person directly affected by a decision of a regional health authority and feels aggrieved by the decision to serve a notice of appeal on the Board and the regional health authority within 10 days after receiving notice of the decision being complained of.

[14] The Order is dated July 26, 2024, however, the Notice of Appeal indicates the Order was received by the Owner on August 01, 2024. The Board received the Notice of Appeal on August 08, 2024. The Notice of Appeal was therefore served on time.

### **Grounds of the Appeal**

[15] In the Notice of Appeal the Appellant, the Owner of the premises - Charlotte Wagner, states the following grounds of appeal:

Item (a) of attached order stating illegal window openings. This is a legal suite, approved by the City of Red Deer in 2011. (Occupancy Permit attached) It has met all safety and fire code requirements for the age of the home.

### **Legal Issues**

[16] The legal issues on this appeal (the “Appeal”) for consideration by the Board:

- a. Whether the Board should confirm, reverse or vary the Order.

### **Jurisdiction**

[17] There were no objections to the composition of the panel for the Board (the “Panel”) and the Panel’s jurisdiction to hear the Appeal.

### **Documents/Exhibits**

[18] Prior to the commencement of the hearing, the following documents were entered as exhibits by agreement of the parties:

- a. Exhibit A - Executive Order of AHS
- b. Exhibit B -Notice of Appeal
- c. Exhibit C - AHS Disclosure (34 pages)
- d. Exhibit D -AHS Written Submissions (118 pages)
- e. Exhibit E- The City of Red Deer Occupancy Permit (2 pages)

### **Submissions of the Appellant**

[19] The Appellant does not deny the violations listed in the Order. Rather, the Appellant relies on the Occupancy Permit issued by the City of Red Deer in 2011 (the “Occupancy Permit”) to argue that the Premises meets all safety and fire code requirements for the age of the building, which appears to have met the requirements of the Alberta Fire Code 2006.

[20] As a result of the age of the building, the Appellant takes the position that the legal effect of the Occupancy Permit is to shield the Premises from the current requirements of the Minimum Housing and Health Standards with respect to egress.

### **Submissions of the Respondent**

[21] AHS takes the position that the Appellant must ensure that the rental accommodation meets the current requirements of the Minimum Housing and Health Standards and that the Occupancy Permit has no bearing on the validity of the Order. As such, there is no justifiable reason to vary the Order.

[22] Matters of public health are of the utmost importance in Alberta. The Legislature of the Province of Alberta passed the PHA and declared that the protection and preservation of the health and safety of the public is the single most important issue under its purview, except where it conflicts with the Alberta Bill of Rights.

[23] The purpose of regulatory legislation is to prevent harm by imposing minimum standards of care. It is essential for the protection of vulnerable parties. The PHA and its related regulations and standards, including the Minimum Housing and Health Standards, serve to protect the public in various situations, including tenants who occupy rental premises.

The stated primary objective of the Minimum Housing and Health Standards is to “protect and promote the health and wellbeing of occupants of rental housing premises and of those who may reside in the immediate vicinity of such premises.” The Minimum Housing and Health Standards establishes the minimum conditions that make housing premises safe.

[24] The absence of egress windows severely limits the ability of an individual to exit a premises in an emergency, and therefore represents a condition that is or that might become injurious or dangerous to the public health.

[25] Whether the Premises met safety and fire requirements in 2011 has no bearing on the application of the Minimum Housing and Health Standards in the present day. The courts in Alberta have held, on prior occasions, that when it comes to the public health and the PHA and its requirements, Public Health Inspectors can insist on compliance with more recent iterations of a regulation if doing so is in the benefit of public health. Accordingly, even if a property was compliant with the relevant regulations in place at the time it was built, a public health order can be issued to require remedial work to be undertaken to bring the property into compliance with more recent standards.

[26] In this regard, in *Boardwalk Equities Inc. v Capital Health Authority*<sup>1</sup>, the Court of Queen’s Bench of Alberta (as it then was) agreed with the Public Health Appeal Board’s analysis and conclusions that “public health is not a static concept” and “when considering matters of public health, one must look to appropriate public health standards as they presently exist.” The Court further accepted the Public Health Appeal Board’s finding that “a public health risk identified today should not be allowed to continue simply because a public place, in this case a housing premise, was built some time ago.”

[27] The Order was issued appropriately and should be confirmed.

## **Analysis and Reasons**

### Standard of Review

[28] The applicable sections of the PHA regarding appeals that the Board must consider include the following:

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<sup>1</sup> 2005 ABQB 34 at para 30.

5(3) *A person who*

- (a) *is directly affected by a decision of a regional health authority, and*
  - (b) *feels himself or herself aggrieved by the decision*
- may appeal the decision to the Board.*

5(1) *In this section, “decision of a regional health authority” means*

- (a) *an order issued under section 62, and*
- (b) *a decision to issue or to cancel, suspend or refuse to issue a licence, permit or other approval provided for in the regulations, and any other decision in respect of which an appeal to the Board is permitted under the regulations, whether any of those decisions is made by the regional health authority itself or one of its employees or agents.*

9 *A regional health authority shall appoint one or more persons as medical officers of health and one or more persons as executive officers for the regional health authority for the purpose of carrying out this Act and the regulations.*

62(1) *An executive officer may issue a written order in accordance with this section if the executive officer has reasonable and probable grounds to believe, based on*

- (c) *an inspection of a public place under section 59 or a private place under section 60, or*
- (a) *a report or test, regardless of whether the report or test is required to be produced or performed under this Act, if a public place or private place was not inspected under section 59 or 60, that a nuisance exists in or on the public place or private place, or that the place or owner of the place or any other person is in contravention of this Act or the regulations.*

5(11) *The Board may confirm, reverse or vary the decision of the regional health authority and shall give written notice of its decision to the appellant and the regional health authority.*

[29] After a thorough consideration of the *Newton*<sup>2</sup> factors and in accordance with the Alberta Court of Appeal’s guidance in *Moffat*<sup>3</sup> and *Yee*<sup>4</sup>, and reading the relevant sections of the PHA harmoniously with the intention of the legislature, the Panel is satisfied that the appropriate standard of review to be applied in this Appeal has been articulated in section 62(1) of the PHA.

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<sup>2</sup> *Newton v Criminal Trial Lawyers’ Association*, 2010 ABCA 399 [*Newton*].

<sup>3</sup> *Moffat v Edmonton (City) Police Service*, 2021 ABCA 183 [*Moffat*].

<sup>4</sup> *Yee v Chartered Professional Accountants of Alberta*, 2020 ABCA 98.

This standard is:

Whether there are reasonable and probable grounds to believe that a nuisance exists on the property or there is a contravention of the PHA or the regulations and standards based on an inspection or a report or test such that the order under appeal is warranted.

[30] In *Canada (Minister of Citizenship and Immigration) v Vavilov*<sup>5</sup>, the Supreme Court of Canada provided instruction on the application of the reasonableness standard of review. The focus of a reasonableness review is on the reasons. A decision will be reasonable if it is both internally consistent and justified in light of the legal and factual constraints that bear on the decision.<sup>6</sup>

[31] Unlike the judicial review approach established in *Vavilov*, the standard of review adopted by the Board represents a hybrid procedure. This approach involves reviewing all the relevant records supplemented with *viva voce* evidence, while also allowing portions of the hearing to be conducted on the record. As the Board is not a court, it is not bound by the strict rules of evidence applicable to courts. However, the Board's authority is limited to confirming, reversing, or varying an AHS order, without extending beyond these options as provided in the Act.

[32] In conclusion, by adopting this hybrid standard of review, the Board can effectively balance the need for procedural flexibility and thoroughness with respect for the specialized expertise and initial findings of the AHS executive officers. This approach ensures that the appeal process remains efficient and cost-effective, while preserving the integrity of the original proceedings and allowing the Board to make well-informed decisions that uphold public health standards in consistence with the objectives of the Act.

### **Findings and Conclusion**

[33] At the time the Occupancy Permit was issued, consideration appears to have been given to the requirements of the Alberta Fire Code 2006. The Occupancy Permit also states that the Occupancy Permit was issued “subject to the applicant/owner meeting all applicable requirements of the Safety Codes Act or any other relevant legislation.”

[34] While the Panel acknowledges that the Appellant had a discussion with the EO on August 5, 2024 regarding the measurement of windows and the Occupancy Permit issued by the City of Red Deer, the fact remains that all owners of private places that are to be used for rental purposes are required to be compliant with the relevant legislation, regulations and public health standards of the current day.

[35] The Occupancy Permit that the Appellant relies upon in support of the Appeal expressly states this requirement. Also, the law as stated in *Boardwalk Equities Inc. v Capital Health*

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<sup>5</sup> *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

<sup>6</sup> *Vavilov*, at paras 99-101.

*Authority* reinforces the requirement imposed upon owners of rental premises to comply with the appropriate public health standards as they presently exist.

[36] When the EO attended the Premises with Marshal Dussault on August 7, 2024, Marshal Dussault considered the requirements of the National Building Code – Alberta Edition which state that unless a bedroom has an exterior door or the building has a fire sprinkler system, each bedroom must have at least one window that can be opened from the inside without the use of tools or special knowledge, must provide an unobstructed opening with a minimum area of 0.35 m<sup>2</sup>, and have no dimension less than 380 mm (15 inches). These requirements recognized by Marshal Dussault mirror the requirements applicable to bedroom windows in rental accommodations in the Minimum Housing and Health Standards, section 3(b).

[37] The Panel finds that the requirements of section 3(b) of the Minimum Housing and Health Standards prevail over the Occupancy Permit. Section 3(b) of the of Minimum Housing and Health Standards cannot be interpreted so as to “grandfather unsafe housing conditions in public premises.” As the owner of the Premises, and as an individual who has chosen to engage in a regulated activity, the Appellant is obligated to comply with the requirement of the PHA, the Housing Regulation, and the Minimum Housing and Health Standards.

[38] The Board is satisfied that the EO had reasonable grounds, based on their inspection of the Premises, to conclude that the dimensions of the bedroom windows were non-compliant with minimum egress requirements, the mold on a wall, and improper weatherproofing of the front door demonstrates that a nuisance exists in or on the Premises, and that the place or owner of the Premises is in contravention of the PHA and the regulations. The EO acted within their authority under the HPA to issue the Order.

[39] For the above reasons, the Order is confirmed and shall remain in effect until rescinded by AHS.

**--Original signed--**  
Kevin Kelly, Chair  
On behalf of the Panel for the  
Public Health Appeal Board

**Date:** 11/12/24