

**PUBLIC HEALTH APPEAL BOARD  
IN THE MATTER OF THE *PUBLIC HEALTH ACT*,  
CHAPTER P-37, R.S.A. 2000  
AND ITS *REGULATIONS*  
IN THE MATTER OF AN APPEAL TO  
THE PUBLIC HEALTH APPEAL BOARD BY KEITH GALL  
OF THE ORDER OF AN EXECUTIVE OFFICER  
ISSUED BY ALBERTA HEALTH SERVICES  
ZONE 2 CALGARY  
DATED SEPTEMBER 29, 2015  
HEARING HELD DECEMBER 3, 2015**

**Counsel**

John Fletcher, Appellant

Ivan Bernardo, Alberta Health Services/Respondent

**Introduction**

The Order of an Executive Officer dated September 29, 2015 was issued pursuant to the *Public Health Act* and its *Regulations* regarding an owner occupied residential property located at 103 Citadel Peak Circle N.W. Calgary, Alberta.

The Order directed the Appellant to discontinue plant production when the least mature crop has been harvested or by December 29, 2015 and to complete certain work in and about the premises by March 29, 2016, June 29, 2016 and September 29, 2016.

The Appellant applied for a stay on October 15, 2015 and the Chair of the Board did not grant the stay but did give the Appellant leave to re-apply for a stay in the event the Board did not hear and decide the appeal prior to December 29, 2015.

There was a Preliminary Hearing on October 28, 2015 and among other matters, the Board advised the parties that the issue at the appeal hearing would be whether the Order was issued pursuant to the *Public Health Act* and its *Regulations* and whether it was a proper exercise of the Executive Officer's authority pursuant to the *Act*.

On December 3, 2015, the Board held a hearing to determine whether the Order made by the Executive Officer on September 29, 2015, was issued pursuant to the *Public Health Act* and its *Regulations*, and whether it was a proper exercise of his authority pursuant to the *Act* and its *Regulations*.

**Decision**

After hearing all the evidence of the Appellant and Alberta Health Services, the Board is satisfied that Alberta Health Services has not made a reasonable effort to resolve the matters in dispute between them and therefore refers the matter to Alberta Health Services for further consideration and redetermination.

Alberta Health Services must deal with the matters in dispute prior to February 1, 2016. If the parties do not resolve the matters in dispute prior to February 1, 2016, the Board will issue a decision based on the evidence that was presented at the appeal hearing on December 3, 2015.

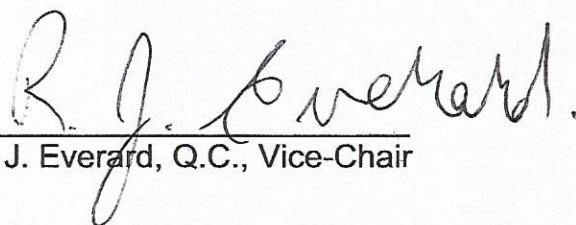
The Chair grants a stay of the Order dated September 29, 2015 until such time as the matters in dispute are resolved between the parties or the Board issues a decision.

**Reasons**

At the conclusion of the appeal hearing, Alberta Health Services submitted that a decision by the Board to refer the matter back to the parties pursuant to sections 5(5) and 5(6) of the *Public Health Act* would be a suitable option for the Board to consider. The Board agrees that the evidence at the hearing was that Alberta Health Services had not made a reasonable effort to resolve the matters in dispute prior to the appeal hearing and that it would be to both parties' benefit if Alberta Health Services gave the matter further consideration. The Appellant's counsel also stated negotiations could be considered.

Given the nature of the dispute, there may be ongoing interactions between the Appellant and Alberta Health Services. It would be to both parties' benefit if those future interactions were based on an agreement about how to proceed and what precautions may be necessary to protect the public's health. As pointed out in the hearing, public health is a 2 way street that requires education and effective communication.

The Board retains jurisdiction to make a decision if the parties are unable to resolve the issues in dispute. Accordingly, the Board directs both the Appellant and Alberta Health Services to advise it in writing on or before February 1, 2016 of the status of the matters in dispute, and if the matters in dispute have not been resolved, whether they consider there is further information beyond the information provided at the December 3, 2015 hearing that should be given to the Board before it renders a decision. The Board will then advise the parties if a continuation of the hearing is required and if so in what form.

Per:   
Ronald J. Everard, Q.C., Vice-Chair

Date: December 16, 2015