

**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 A PRELIMINARY APPLICATION  
TO EXTEND THE TIME PERMITTED TO FILE A NOTICE OF  
APPEAL**

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

BETWEEN:	)	
	)	
	)	
Lindsay Keys	)	
Ken Shebib	)	Self-represented
(Applicants)	)	
	)	
- and -	)	
	)	
ALBERTA HEALTH SERVICES	)	Conor Fleming,
	)	Alberta Health Services,
(Respondent)	)	for the Respondent
	)	
	)	
	)	
	)	Date of Board Meeting: February 18,
	)	2025, via videoconference

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**DECISION AND REASONS FOR DECISION**

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**The Application**

[1] A notice of appeal (the “Notice of Appeal”) was served on the Public Health Appeal Board (the “Board” or “PHAB”) by Ms. Lindsay Keys and Mr. Ken Shebib on January 9, 2025.

[2] Within the Notice of Appeal was a preliminary application to the Board to extend the 10-day period within which to submit a Notice of Appeal of an order of an Alberta Health Services Executive Officer (the “Application for Extension”), as permitted by the *Public Health Act* (“PHA”).

[3] The Application for Extension related to an order of an Alberta Health Services (“AHS”) Executive Officer dated December 20, 2024 (the “Order”), concerning the food establishment located in St. Albert, Alberta and municipally described as the Thirsty Rooster Trail Eatery (2565060 Alberta Ltd.), 388 St. Albert Trail, Unit E, T5N 5N6 (the “Premises”).

### **Board Decision**

[4] The Board denies the Application for Extension for the reasons that follow.

### **Background**

[5] The Application for Extension was included within the Notice of Appeal.

[6] Legal counsel for the Respondent (“AHS Counsel”), indicated its opposition to the Application for Extension.

[7] The Order being appealed noted several conditions, all of which were resolved by Ms. Keys and Mr. Shebib, such that the Order was rescinded on December 24, 2025.

[8] Given that the Order was rescinded, the Board requested the parties provide written submissions regarding whether to grant the Application for Extension and to hear an appeal of a rescinded order and thus proceed to a hearing for Appeal No.: 01-2025.

[9] Rather than hold a hearing of this Application for Extension, a quorum of the Board met to consider the information provided by the parties, including

- a. the Notice of Appeal received January 9, 2025;
- b. the Application for Extension; and,
- c. written submissions from each of the parties, as requested by the Board on February 5, 2025, regarding their respective positions on why the Board should hear an appeal of an Order that is rescinded (an ostensibly Moot Appeal).

### **Grounds of the Application for Extension and the Appeal**

[10] Concerning the Application for Extension contained in the Notice of Appeal, Ms. Keys submitted three grounds to support its granting Application for Extension:

- a. She and Mr. Shebib were not fully informed of the Order when it was verbally delivered on December 19, 2024;
- b. There were holidays over the Christmas season that prevented them from obtaining legal advice; and,

- c. AHS failed to inform them of any appeal options available.

[11] Concerning the grounds to appeal the Order as found in the Notice to Appeal, Ms. Keys and Mr. Shebib submitted the following:

- a. At minimum, an acknowledgement that AHS mistakenly posted on the website that the Premises operated in violation of the Order; and
- b. An assessment of the entire situation be done based on the following:
  - i. Four-year track record of the owner/manager, Ken Shebib, always complying with every request from an AHS Inspector.
  - ii. A four-year precedent, set by the AHS Inspector, whereby communication was direct with Ken Shebib via email, phone, and text message. A standard of service that became expected based on the previous four years.
  - iii. The reports were given to or emailed to staff that were no longer employed. Had a copy of the inspection reports been delivered to the owner/manager directly the closure of the Premises could have been avoided.
  - iv. This failure by the AHS Inspectors to communicate directly and by inaccurately reporting that Thirsty Rooster Eatery & Bar operated in violation of the Order, has resulted in damages to the business, its reputation with the community of St Albert, and in the business community.

## **Legal Issues**

[12] The legal issues on this Appeal for consideration by the Board are as follows:

- a. Should the Board extend the time for Ms. Keys and Mr. Shebib to file an appeal of the Order?
- b. Should the Board hear an appeal of a rescinded order appeal?

## **Jurisdiction**

[13] There were no objections to the composition of the panel for the Board and the Panel's jurisdiction to decide on the application.

## **Submissions of the Applicants**

[14] Ms. Keys and Mr. Shebib argued that they did not receive a copy of the written order at the time the Premises was closed and were in "full panic mode" to meet the required work and did not become aware of the ability to appeal until after consulting with their legal counsel whose office was closed January 3-6, 2025.

[15] Ms. Keys and Mr. Shebib reported continued public statements made by AHS Environmental Public Health (“AHS-EPH”) indicating the Premises was operating in violation of the Order in the days between when it was issued and when it was rescinded.

[16] While the Order has since been rescinded, Ms. Keys and Mr. Shebib report there is ongoing reputational damage to the business.

[17] They request that AHS-EPH clarify to the public that they were not in fact operating in violation of the Order but within what was permitted according to Public Health Inspector Chris Kelly.

### **Submissions of the Respondent**

[18] AHS Counsel indicated opposition to the Application for Extension.

[19] Regarding the hearing of a rescinded order, AHS Counsel argued that according to PHAB Rules of Procedure 3.6, moot appeals should only be heard in extraordinary circumstances and that the appeal does not represent an extraordinary circumstance and therefore it should not be heard.

[20] In line with the analysis conducted by the Alberta Court of King’s Bench decision in *Stacey’s Happy Place v. Alberta Health Services*<sup>1</sup>, AHS Counsel submitted that while there was an adversarial relationship in place at the relevant time, the remaining factors do not weigh in favor of a determination that this appeal is an extraordinary circumstance that would justify hearing a moot appeal.

### **Analysis and Reasons**

#### Applicable Legislation, Case Law and Rules

[21] Section 5(3) of the PHA states that a person who is directly affected by a decision of a regional health authority and feels aggrieved by the decision must commence an appeal by serving a notice of appeal within 10 days after receiving notice of the decision being complained of. Section 5(9) permits the Board to extend the time within which an appeal must be taken under subsection 5(3) if it considers it appropriate to do so.

[22] The PHAB Rules of Procedure permit the Board all the powers necessary to conduct a fair, expeditious and impartial hearing of an appeal. The Rules of Procedure also permit the Board to hear all types of Preliminary Applications (section 2.2.1.a.) brought forward by any Party (section 3.4.1).

[23] Examples of Preliminary Applications include - determining if the Board should accept an appeal that appears to have been filed out of time (section 3.4.1.c.); and, extending the time for production of documents (section 3.4.1.h.).

[24] Section 3.4.4.a. of the Rules of Procedure permits, at the discretion of the Presiding Board Member, for Preliminary Applications to be addressed by written submissions only.

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<sup>1</sup> 2248870 *Alberta Ltd., o/a Stacey’s Happy Place v. Alberta Health Services*, 2024 ABKB 109.

[25] The Board reviewed and considered Ms. Keys' and Mr. Shebib's Application for Extension and the Parties' written submissions, and applied the guiding factors the Board must consider as outlined by the Alberta Court of Appeal in *Dureab*<sup>2</sup> when deciding whether to exercise the Board's discretion to extend the time to appeal, including:

- a. a bona fide intention to appeal held while the right to appeal existed;
- b. an explanation for the failure to appeal in time that serves to excuse or justify the lateness;
- c. an absence of serious prejudice such that it would not be unjust to disturb the judgment;
- d. the applicant must not have taken the benefits of the judgment under appeal; and
- e. a reasonable chance of success on the appeal, which might better be described as a reasonably arguable appeal.

[26] The Alberta Court of Appeal also noted that in addition to the above factors, it may consider "whether the proposed appeal is 'likely to settle the law' or whether it is of interest only to the parties: *Simbajohn v Leduc*, 2015 ABCA 321 at para 14."<sup>3</sup>

## Findings and Conclusion

[27] After reviewing the evidence and submissions made by the Parties, the Board makes the following findings.

### Intention to appeal during the appeal period

[28] While the Board does not dispute intention to appeal the Order, the Board finds that Ms. Keys and Mr. Shebib have not provided compelling reasons to extend the time to serve the Notice of Appeal. The Order is dated December 20, 2024, and the Notice of Appeal was not received until January 9, 2025, which is clearly outside the 10-day appeal period specified in the PHA. This is expressly acknowledged in the Notice of Appeal:

We are asking the Board accepts this Appeal outside of the 10 days after the order was received for a number of reasons, we were not fully informed of the order on December 19, there were holidays over the Christmas season that prevented us from obtaining legal advice, AHS failed to inform us of any appeal options being available.

[29] The Notice of Appeal indicates that the verbal notice of the Order was received on December 19, 2024. Also, the Closure Order states, "Confirmation of a verbal order issued to Ken Shebib on December 19, 2024." The Notice of Appeal also states that the written decision or Order was received on December 20, 2024, and that AHS Inspector Karen placed a Closure Notice on the front door of the Premises on that date.

<sup>2</sup> *Dureab v Ben-Harhara*, 2021 ABCA 128 ["*Dureab*"] at para 6.

<sup>3</sup> *Dureab* at para 7.

[30] While the Board acknowledges that the PHA provides the Board with discretion to extend the period to serve the Notice of Appeal if it considers it appropriate to do so, the Board does not find Ms. Keys and Mr. Shebib’s reasons for requesting an extension of the time to serve the Notice of Appeal after the 10-day statutory appeal period to be compelling enough to warrant extending the time to serve the Notice of Appeal.

[31] The Board also notes that while the Notice of Appeal states that “AHS failed to inform us of any appeal options being available”, the Order clearly states:

You have the right to appeal

A person who a) is directly affected by a decision of a Regional Health Authority, and

b) feels himself aggrieved by the decision

may appeal the decision by submitting the Notice of Appeal form within ten (10) days after receiving the order to: Public Health Appeal Board...

and provides the Board’s address, phone and fax numbers, and links to the Board’s email address and website.

[32] The Board finds that AHS, via the express wording contained in the Order, clearly notifies recipients of public health orders of their right to appeal an order within 10 days after receiving it and where to submit the Notice of Appeal.

[33] One of the guiding factors the Board must consider as set out in *Dureab*, is whether there is a reasonable chance of success on the appeal, or a reasonably arguable appeal. The Board finds that this appeal has no reasonable chance of success or a reasonably arguable appeal. AHS rescinded the Order on December 24, 2025.

#### Reasonable chance of success on the appeal

[34] The Board did not find any compelling reasons for why the Board should hear an appeal of an order that is no longer active.

[35] The grounds of the appeal relate to concerns about the conduct of, and the timing and means of communication with, the AHS Executive Officers rather than any grounds for appealing the Closure Order itself – concerns of such nature are outside of the jurisdiction of the Board to consider (PHAB Rules of Procedure 3.2.4).

[36] One of the guiding factors the Board must consider as set out in *Dureab* is whether there is a reasonable chance of success on the appeal, or a reasonably arguable appeal. The Board finds that this appeal has no reasonable chance of success or a reasonably arguable appeal. AHS rescinded the Order on December 24, 2025, and therefore there was no active Order that could be appealed. The appeal had no reasonable chance of success and no reasonably arguable appeal, and therefore the appeal, if the Board had allowed the late filing of the Notice of Appeal, lacked any threshold evidentiary basis to succeed and was bound to fail.

[37] Based on the aforementioned findings, the Board denies the Application for Extension and dismisses this appeal.

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Kevin Kelly, Chair  
On behalf of the Hearing Panel of the  
Public Health Appeal Board

**Date:**