



Community Care and Assisted Living Appeal Board

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DECISION NO. CCALB-CCA-21-A003(d)

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

BETWEEN:	Ghalia Rebei Adlani (Moonlight Daycare)	APPELLANT
AND:	Dr. Emily Newhouse, Medical Health Officer, Fraser Health Authority	RESPONDENT
BEFORE:	A Panel of the Community Care and Assisted Living Appeal Board Richard Margetts, K.C., Panel Chair Shelene Christie, Member Donald Storch, Member	
DATE:	Conducted by way of an oral hearing concluding on April 13, 2022	
APPEARING:	For the Appellant: Kenneth D. Craig, Counsel For the Respondent: Robert P. Hrabinsky, Counsel	

Final Decision on the Merits

APPEAL

[1] The Appellant, Ghalia Rebei Adlani (carrying on business as Moonlight Daycare), appeals to the Community Care and Assisted Living Appeal Board (the "Board" or the "CCALAB") from the June 9, 2021 reconsideration decision (the "Reconsideration Decision") of Dr. Emily Newhouse, the Medical Health Officer ("MHO") for Fraser Health Authority.

[2] In the Reconsideration Decision, the MHO cancelled the Appellant's daycare operating license (the "License") effective September 15, 2021.

[3] The appeal is brought pursuant to section 29 of the *Community Care and Assisted Living Act* (the "Act" or "CCALA").¹

¹ *Community Care and Assisted Living Act*, SBC 2002, c 75.

[4] The oral hearing on the appeal commenced on December 8, 2021 and concluded on April 13, 2022, after nine days of hearing, during which a total of seven witnesses were heard from.

BRIEF SUMMARY OF DECISION ON APPEAL

[5] The main issue to be decided on appeal is whether the Appellant has proven that the decision to cancel her License was not justified.

[6] After careful consideration, for reasons set out below, the Panel has decided to dismiss the appeal on the basis that the Appellant has not shown, following a full hearing, that the MHO's June 9, 2021 Reconsideration Decision was not justified.

[7] We acknowledge the significant efforts that the Appellant took to defend against the enforcement action taken by the Respondent, and we know that this conclusion must be deeply disappointing to her. While we have made serious adverse findings against the Appellant, she should not interpret our findings, or the dismissal of this appeal, as a failure on her part to impress the Panel that there were likely many positive aspects to the care she provided. However, the focus of this appeal proceeding is on the incidents that raised concerns about compliance with the legislation.

BACKGROUND

[8] The history of this matter bears review. On July 9, 2020, terms and conditions were placed on the Appellant's License (effective August 9, 2020), by Licensing Officer JS, whereby the Appellant:

1. Was precluded from providing care for school age children; and
2. Was required to complete the "Best Choices; the Ethical Journey" training series or equivalent ethical practice training approved by the Licensing Officer.

[9] These restrictions were imposed after a lengthy history of interaction between Fraser Health Authority's Community Care Facilities Licensing department ("Licensing") and the Appellant, who has held a License since 2013, culminated in the finding of many irregularities that were identified by Licensing officer JS and later summarized by the MHO in her Reconsideration Decision in the management and operation of Moonlight Daycare.

[10] Specifically, the Appellant was found to be operating unlawfully, in contravention of section 7(1)(b) of the Act [*standards to be maintained*] and/or subsections 10 [*continuing duty to inform*], 11 [*posting and advertising of license and certificates*], 12 [*investigation or inspection*], 19 [*character and skill requirements*], 34 [*group sizes and employee to children ratio*], 40 [*maximum hours of care*], 41 [*overnight care*], 52 [*harmful actions not permitted*], 56 [*community care facility records and policies*], and/or 57 [*records for each child*] of the Child Care and Licensing Regulation (the "Regulation" or "CCLR") on multiple occasions between 2016 and 2019, including by:

- providing care in an unlicensed area of the home;

- providing care in an unlicensed secondary location;
- exceeding the number of children in care;
- caring for children outside of permissible hours;
- leaving a child unsupervised;
- keeping inadequate records; and
- obstructing an investigation by Licensing.

[11] The Licensing Decision noted that the Appellant “knowingly put children at risk and provided misinformation to conceal [her] actions from Child Care Licensing”.

[12] Specifically, Licensing found that the Appellant made “a conscious decision to exceed the maximum capacity” by providing care at multiple locations, and obstructed Licensing by denying that she cared for children offsite or in unlicensed areas, denying that staff caring for children offsite were acting as her employees, contacting parents to pick up children at locations other than the licensed facility to conceal the number of children in care, asking parents to provide inaccurate information if contacted, and failing to make all records available to Licensing.²

[13] Various grounds for reconsideration were raised by the Appellant's counsel in her December 8, 2020 application for reconsideration and were considered by the MHO in her June 9, 2021 Reconsideration Decision. In conclusion of her reconsideration application, the MHO summarized as follows:

I have decided that the terms and conditions of your license on July 9, 2020, are not sufficient to mitigate the risk that that your repeated contraventions of the legislation pose to the safety and well-being of the children in your care.

[14] Dr. Newhouse, in her Reconsideration Decision of June 9, 2021, determined that the License should be cancelled effective September 15, 2021, and she also imposed additional terms in the interim. At page 9 of the Reconsideration Decision, she wrote:

- I am cancelling your License, effective September 15, 2021.
- I confirm that the condition attached to your License that you must not provide care to school aged children as per the definition in the CCLR will remain in place.
- As your License is being cancelled, I am removing the condition that you must complete the “Best Choices: The Ethical Journey” training series [...]
- In addition, I am attaching further terms and conditions to your License, effective July 15, 2021:
 - a. You must not accept or enroll any new children into your care.

² Page 3 of Licensing Decision (Appeal Record, C4).

- b. You must provide Licensing with a list of all children currently in attendance at Moonlight Daycare and the dates and times that they attend, and you must notify Licensing in advance if there is any deviation from this schedule.
- c. You must advise the parents of children in your care that you will no longer provide care as of September 15, 2021.³

[15] On August 17, 2022, after filing this appeal, the Appellant applied to this Board for a temporary suspension of the MHO's Reconsideration Decision. Under section 29(6) of the Act, a temporary suspension may be granted where the Board is satisfied, on summary application, that a suspension would not risk the health or safety of a person in care. Despite expressing reservations based on the seriousness of the allegations, the Board Chair granted an interim temporary suspension on September 13, 2021 and a temporary suspension on October 21, 2021, understanding that it would be of short duration and that the conditions on the Appellant's License would negate the risk to those in care (CCALB-CCA-21-A001(a)).

[16] At the conclusion of the hearing of the appeal, on April 13, 2022, counsel for the Respondent applied to the Board without notice to set aside the temporary suspension. Based on oral submissions, on May 2, 2022, the Panel decided, on the basis of the totality of the evidence it had received during the course of the hearing, and in particular evidence that the Appellant had operated in contravention of the conditions placed on her License, that the temporary suspension should be set aside and the License should be cancelled effective May 31, 2022 (CCALB-CCA-21-A001(b)).

[17] The Appellant brought an application for reconsideration of the lifting of the temporary suspension. To ensure both parties had the opportunity to fully argue their positions, the Panel gave leave for both parties to file written memoranda of their positions. Upon further reconsideration, on May 30, 2022, the Panel upheld its decision and confirmed the cancellation of the license effective May 31, 2022 (CCALB-CCA-21-A001(c)).

ISSUES

[18] As noted above, the Appellant seeks review of Dr. Newhouse's Reconsideration Decision by this Board pursuant to section 29 of the Act.

[19] In her Notice of Appeal dated July 9, 2021, the Appellant stated that the Reconsideration Decision should be set aside because:

"...amongst other things, Fraser Health was dishonest with her in regards to the delivery of a letter to her in July 2020 and based their decision on sloppy and incomplete data collection performed by Licensing staff who made deliberately false statements in their reports."

³ Page 9 of Reconsideration Decision (Appeal Record, A9).

[20] Based on the Appellant's Notice of Appeal and further particulars exchanged between the parties, the Respondent summarized the issues on appeal as follows in its Statement of Points:

- With respect to delivery of the Licensing's July 9, 2020 decision: (i) Was the decision delivered to the Appellant's facility on July 9, 2020? (ii) Was Licensing "dishonest" in asserting that the decision was delivered on July 9, 2020? (iii) What bearing, if any, does the question of delivery on July 9, 2020 have on the appeal?
- With respect to the Facility Inspection Report dated April 20, 2018: (i) What bearing, if any, does the report have on the decision under appeal, given that neither Licensing or the MHO relied on it? (ii) Did Licensing make a "deliberately false statement" in the report in writing "Licensing notes the manager's name was not displayed"? (iii) Did Licensing make a "deliberately false statement" in the report by stating in writing "A family member or facility manager drop off and pick up children from school. Licensing notes that family member does not have Criminal Record Check in the file"?
- With respect to the publication and non-publication of certain reports on Licensing's website: (i) What import, if any, arises from the fact that a Facility Inspection Report dated January 26, 2016 and published on the website was not referred to or relied upon in the Licensing's Decision or the Reconsideration Decision? (ii) What import, if any, arises from the fact that the findings of an investigation concluded on September 16, 2016 were referred to and relied upon in the Licensing Decision and Reconsideration Decision when the findings were not published on the website? (iii) What import, if any, arises from the fact that a Facility Inspection Report dated May 23, 2019 and published on the website was not referred to or relied upon in the Licensing Decision and Reconsideration Decision? (iv) What import, if any, arises from the fact that a Facility Inspection Report dated November 18, 2019 was referred to and relied upon in the Licensing Decision and Reconsideration Decision when that report was not published on the website?
- Can the Appellant discharge the burden of proving that the following findings are "not justified": (i) care was being provided by the Appellant at an unlicensed secondary location; (ii) care was being provided by the Appellant in an unlicensed area of her home; (iii) the Appellant had asked parents to provide misinformation to Licensing; (iv) the Appellant had given immediate notice to some families to withdraw their children from care.

The Appellant disagreed with the Respondent's characterization of the issues on appeal and set the issues out as follows in her Statement of Points:

- a) Was the Appellant denied procedural fairness by Licensing's failure to deliver the June 9, 2020 letter?

- b) Was the Appellant denied procedural fairness by the inclusion of incorrect information in her file with respect to findings that the “manager’s name was not displayed” and a “family member does not have a Criminal Record check in her file”?
- c) Was the Appellant denied procedural fairness by the Respondent’s failure to post all Facility Inspection Reports on its website and its reliance on unposted reports?
- d) Will the Appellant be denied procedural fairness if forced to respond to allegations that (i) have no basis in fact and (ii) were endorsed retroactively when the change was made to conditions on her license to allow for overnight care?
- e) Was the Appellant denied procedural fairness by the failure of the Respondent to provide her with an interpreter?

[21] Ultimately, the issue for the Panel to determine on appeal is whether the Reconsideration Decision of the MHO was not justified.

[22] Under section 29(11), the CCALAB is to conduct an appeal hearing by receiving evidence and argument from the parties as if it was making a fresh decision on first instance. The Appellant bears the burden of demonstrating that the decision of the MHO is not justified on the balance of probabilities, as directed by section 29(11) of the Act, which states:

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.

[23] We agree with earlier panels of the Board which have held that the language in section 29(11) of the Act means that “we are not confined by the findings of fact made by the original decision-maker”.⁴

[24] Accordingly, we must consider the totality of the evidence before us and undertake our own analysis of the issues. If we agree that the MHO’s decision to terminate the License was justified, that decision will be confirmed and the appeal dismissed. If we do not agree that the MHO’s decision was justified, the decision below may be reversed or varied, or we may remit the matter back to the licensing authority for reconsideration, with or without directions, as set out in section 29(12).

[25] Our task then, is to determine whether the Appellant, after a full hearing, has met her burden of convincing us that the Reconsideration Decision made by the MHO was not justified. In undertaking its deliberations, the Board can receive any information that it considers “relevant, necessary and appropriate” and it is not bound by the strict rules of evidence that bind a court.⁵

⁴ *KN v Interior Health Authority*, Decision No. 2016-CCA-001(a), at para 12. See also *Smiley Stars Daycare*, Decision No. 2010-CCA-006(a), June 13, 2011.

⁵ Section 40(1) of the *Administrative Tribunals Act*.

[26] In this appeal, the scope of admissible evidence has been very broad because of the following factors:

- the length of time over which the complaints, investigation and deliberations transpired;
- the nature of the allegations the parties made against each other; and
- the evidence that the parties, mainly the Appellant, advanced to support their respective positions.

[27] There was some evidence that each party sought to introduce to which the other objected. We have determined that, except for those specific pieces of evidence that we ruled as irrelevant and therefore inadmissible during the hearing, all other evidence put forward by the parties is admissible and forms part of the information on the appeal.

[28] We granted the parties significant latitude in order to ensure that there was a “full and fair disclosure of all matters relevant to the issues”⁶ and such that each of the parties was given a full and fair opportunity to present their case. We appreciate the patience and courtesy the parties extended to the Panel and each other during this process.

DISCUSSION AND ANALYSIS

Credibility

[29] The Appellant speaks English as a second or third language, and she brought an interpreter for the hearing. At the same time, the Appellant stated that she has good command of English. She completed her ECE training in Vancouver, BC in English. She stated that she herself wrote all correspondence to Licensing and parents.

[30] In her resume⁷, the Appellant describes herself as fluent in English, as well as French and Arabic. A reference letter prepared by her friend, SN, also described her as having

“excellent command of the English and French languages and exceptional communication skills [...] In my personal interaction with Ghalia I have been impressed by her strong communication skills and her ability to establish a comfortable rapport with others.”⁸

[31] Further, in response to questioning during the appeal hearing, the Appellant replied that she did not wish to undertake further English language training.

[32] It was the Panel’s observation that the Appellant was generally able to understand and respond to the evidentiary process with minimal difficulty. However, her evidence was not given in a forthright manner. While complex and difficult questions with little probative value or relevance were answered quickly

⁶ Section 38(1) of the *Administrative Tribunals Act*.

⁷ Exhibit 5.

⁸ Letter dated February 7, 2013, entered as Exhibit 6.

and cogently, simple questions to which answers might prove harmful to her appeal were typically referred to the interpreter. The Appellant's response was often to answer a question with another question, and many of her responses appeared to this Panel to be evasive or argumentative. She appeared to have a complete distrust of Licensing.

[33] We are mindful of the direction of the Court of Appeal in *Charnya v. Fornya* (1952), 2 D.L.R. 354 at para 357. In short,

[T]he real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skillful exaggeration with partial suppression of the truth.

[34] In assessing the credibility of a witness's evidence, regard may be had to various factors, including the firmness of the witness's memory, whether the witness has a motive to lie, whether the witness's evidence is consistent with independent evidence, whether the witness's evidence changes during the course of the hearing, whether the witness's testimony seems unreasonable, impossible or unlikely, and the demeanour of the witness (*Bradshaw v. Stenner*, 2010 BCSC 1398, at para. 186).

[35] In the present case, we found that the evidence of the Respondent witnesses, MHO Dr. Newhouse and Licensing Officer JS, to be forthright and consistent with the independent evidence. We found that the Appellant's evidence was not consistent or reliable.

[36] For example, the Appellant sought to impeach the credibility of a witness, parent JP, in anticipation that she might testify. It was to be JP's evidence that the Appellant had prepared a written recommendation letter to Licensing to her own benefit, and then pressured her to sign it, which she refused to do. The Appellant subsequently submitted a letter from JP in support of her request for reconsideration that JP denies writing. The Appellant identified this witness as being in the midst of matrimonial difficulties rendering her emotionally unstable and unreliable. The witness, when called, appeared to the Panel on the contrary to be objective, stable, and reasonable in giving her evidence.

[37] In her dealings with Licensing, the Appellant's position has been one of denial, typically coupled with allegations of impropriety on the part of Licensing, followed by acknowledgment of her actions, an argument about the scope of her obligations as a day care provider and ultimately to suggest that the various contraventions that are alleged to have been committed are insignificant.

[38] Overall, it appears that Licensing made many attempts to assist the Appellant to come into compliance by providing her with support and resources. They met with her to discuss concerns and hear her side of the story and gave her time to rectify issues. Based on the evidence reviewed by the Panel, a fair method of Progressive Enforcement was used.

[39] Videos of an interaction between the Appellant and Licensing Officers on September 15, 2021 were presented during the hearing by the Appellant.⁹ While the Appellant and her witness, TM, who made the videos, contended that the Licensing Officers were harassing and intimidating towards the Appellant, the Panel's view after watching the videos is that the Licensing Officers conducted themselves professionally and in a calm manner. This supports the view that the information provided by the Appellant and her witnesses during the hearing was not always reliable.

[40] Based on the above, we have no difficulty in concluding that, where there is a contradiction in the evidence, or an allegation made by Fraser Health but challenged by the Appellant, that the evidence of the Respondent is preferable.

The June 9, 2021 Reconsideration Decision

[41] The Appellant defined the issues on appeal. Many were the same grounds of concern identified and addressed by the MHO in her Reconsideration Decision. The appeal advanced by the Appellant lacked an underlying focus, it presumably being the Appellant's view that if any findings of fact upon which the MHO predicated her decision could be impeached, the justifiability of the decision must likewise be compromised.

[42] In the view of this Panel, some issues identified by the Appellant were of little merit or relevance. The Appellant sought to undermine the Reconsideration Decision by objecting to technical errors or issues. For example, much was made by the Appellant of the alleged late delivery of Licensing's Officer JS's letter in July 2020, though delivery of the letter was acknowledged by the Appellant on August 26, 2020. Whether delivery was made in July 2020 (the import being that the Appellant had 30 days to apply for a reconsideration from the date of delivery) is immaterial to this appeal, no exception being taken to the timeliness of her application for reconsideration by the Respondent.

[43] The Appellant outlined a number of objections to the Licensing Decision in her counsel's letter of December 8, 2020 (the request for reconsideration). They constitute a more comprehensive and focused statement of the Appellant's objections to the Licensing Decision, and by implication the MHO's Reconsideration Decision, than the exchange of statements of issue and particulars the parties exchanged in or about October 2021.

[44] To that end, we propose to review those expressed concerns, and the response of the MHO in her Reconsideration Decision as a starting point in our analysis of whether the Reconsideration Decision was not justified. We will then

⁹ Collectively, the videos were entered as Exhibit 15. The context was that Licensing went to the facility to give the Appellant an opportunity to respond to information from parents regarding new children who had been enrolled in her care contrary to the conditions on her License. This is set out in the Inspection Report from September 15, 2021 (Respondent's Supplementary Brief of Documents, pages 167-168) and discussed elsewhere in this decision.

turn to the other issues raised in the Statement of Points, to the extent that they are not covered here.

1. *The Licensing Decision was not delivered on July 9, 2020.*

[45] In the Reconsideration Decision, the MHO writes the following in response to the Appellant's assertion that she did not receive the Licensing Decision on July 9, 2020 but did receive it on August 26, 2020:

Given the written confirmation Canada Post provided for the delivery of the Licensing Decision Report, I find it likely that you receive this document on July 9, 2020. Irrespective of this, since you acknowledge receiving personal delivery of the same materials a few weeks later, I believe the procedural requirements for notification of a change of license have been required.

[46] Dr. Newhouse finds it was likely the July 9, 2020 Licensing Decision was delivered by Canada Post on July 9, 2020. Based on the evidence, it appears to the Panel that this is an error in terms of which carrier delivered the letter. The report was entrusted to Vancity Courier for delivery, and not Canada Post.

[47] Ms. Adlani denies receipt on July 9, 2020, and acknowledgment of delivery receipt cannot be tied to anyone residing or working at the Moonlight Daycare premises. However, there is no doubt that a hand delivered copy was provided to Ms. Adlani on August 26, 2020.

[48] While it cannot be determined that the report was delivered on July 9, 2020, the circumstances of delivery are irrelevant to our consideration, as we have mentioned above. No substantive rights of the Appellant were lost or compromised. She requested reconsideration of the Licensing Decision, and the request for reconsideration was considered on its merits by the MHO.

[49] We do not find anything in this aspect of matters to conclude that the MHO's Reconsideration Decision is not justified.

2. *The restrictions imposed by Licensing's Decision caused Moonlight Daycare to suffer economic harm.*

[50] The Appellant argues that, due to the conditions on her license imposed by Licensing, she suffered economic harm because she was not able to fill all the "time slots".

[51] In her Reconsideration Decision, the MHO responds that whether the imposition of terms and conditions on a License result in a reduction of income is not Licensing's main concern; the safety and well-being of the children in care is. The MHO further states that she observes that the Appellant is overly focused on the financial aspects of the daycare's operation.

[52] While not suggesting that there will never be other interests to take into account, the Panel agrees with the MHO that "it is the role of Licensing to ensure

the health and safety of children in care, not to ensure a maximum income for a licensee"¹⁰.

[53] Moreover, the MHO further notes in her decision that the conditions imposed by Licensing did not restrict the number of children the Appellant could care for. She was still able to care for eight children at any one time at the licensed facility. Indeed, an inspection report from October 27, 2020 indicates that the Appellant was operating at full capacity.¹¹ The only restriction on the Appellant's License was that she could not care for school age children.

[54] Licensing requirements are predicated upon appropriate levels of care being satisfied, and to exceed the prescribed headcount presumptively increases the risk to the attendees. We find no error in the MHO's judgement in concluding that there were instances of the daycare exceeding its enrolment limitations. Inspection reports¹² and other evidence presented to the Panel during the course of the hearing (including a log of fire drill showing nine children present on November 21, 2019¹³) indicate that there have been a number of times that the Appellant has exceeded maximum capacity.

[55] We do not find anything in this aspect of matters to conclude that the Reconsideration Decision is not justified.

3. *The complaints of August 24, 2016 and September 26, 2018 were only "minor" errors.*

[56] The Appellant asserts that, although complaints to Licensing dated August 24, 2016 and September 26, 2018 were found to be substantiated in full or part, these were "minor" errors that were rectified.

[57] While the MHO acknowledges in the Reconsideration Decision that some of the individual contraventions may be considered an "inadvertent oversight" or "remedial gap in knowledge", she makes the further observation that other contraventions are serious and repeated.

[58] She notes these infractions include care outside of operating hours (CCLR Section 40), exceeding the permissible number children in care (CCLR Section 34), providing care in an unlicensed section of the facility (CCALA Section 7(1)(b)), and incomplete record keeping (CCLR Section 57).

[59] We find, based upon the totality of the evidence advanced by the parties, and in particular the contradictory evidence of the Appellant herself, which is also noted and considered by the MHO in the Reconsideration Decision, that these noted contraventions occurred.

[60] We cannot agree with the Appellant that the totality of the foregoing is minor. In fact, the Appellant's history of repeated non-compliance, and her

¹⁰ Page 2 of Reconsideration Decision (Appeal Record, A2).

¹¹ Respondent's Supplementary Brief of Documents, page 082.

¹² For example, the Inspection Report dated November 18, 2019.

¹³ Exhibit 12.

confrontational approach to Licensing when issues were brought to her attention, is troubling and highly problematic.

[61] We do not find anything under this heading to conclude that the Reconsideration Decision is not justified.

4. ***Overnight care was provided to a child but was unpaid and done in a private capacity.***

[62] An example of the Appellant's manner of dealing with Licensing arises from her provision of overnight care to children, contrary to the legislation and a 2016 Health and Safety Plan that she submitted.

[63] In reference to a June 26, 2019 complaint, the Appellant acknowledged providing overnight care but claimed that this care was unpaid and in a private capacity. Because the licensed facility is a private home, it is difficult to distinguish when the facility is operating as a daycare and when it is a private arrangement with a family. Additional evidence was presented which showed that overnight care was also provided on another occasion in 2016.¹⁴

[64] As the operator of a licensed facility, the Appellant was or should have been aware of the requirement to give written notice to Licensing prior to providing overnight care. She failed to give such notice, and she admitted to providing overnight care. This was contrary to subsection 41(1) of the Child Care Licensing Regulation. Further, this care was also in violation of her written commitment to Licensing to provide advance notice of such care, made on September 19, 2016 in response to the earlier inspection report.¹⁵

[65] Had more appropriate levels of communication existed between Licensing and the Appellant, it is reasonable to conclude that this contravention could have been avoided. Again, the MHO notes that the Appellant did not provide historically consistent explanations for her activities, which undermines both her credibility and her relationship with the Health Authority.

[66] The issue of providing overnight care without notice, together with other contraventions such as exceeding licensed capacity, demonstrates a pattern of non-compliance and unwillingness to operate the facility in accordance with the Act and Child Care Licensing Regulation on the part of the Appellant.

[67] We do not find anything under this heading to conclude that the Reconsideration Decision is not justified.

5. ***Care at a secondary location was denied.***

[68] The allegation of care being provided at a secondary location is addressed by the MHO in detail in her Reconsideration Decision.

[69] The MHO notes that the Appellant denied the existence of the second location when she met with Licensing on July 15 and August 15, 2019. When confronted on August 15, 2019 with evidence obtained from the landlord, who confirmed that he

¹⁴ September 16, 2016 Inspection Report (Appeal Record, C15 to C18).

¹⁵ Respondent's Supplementary Brief of Documents, page 182.

had rented the basement suite of his home to the Appellant for two years, the Appellant eventually admitted that she had rented or looked into renting the basement suite at that address as a residence for her nephew, but she denied providing care to children at that location.

[70] When confronted with information collected from parents, the Appellant could not explain why multiple parents would report a secondary location if it did not exist.¹⁶

[71] This allegation was also explored in detail during the course of the hearing before this Panel. According to the evidence, many parents provided information about the second location to Licensing, of picking their children up from this location and, more disconcertingly, being asked to refrain from alerting Licensing to the location.

[72] Licensing was told by several parents that children were taken to the second location. Although Licensing never observed children at the location, they saw toys and equipment in the backyard and a sign posted on the door saying "at the park". Parents also reported to Licensing that they were instructed to pick up children at various locations – the park, the other address, and even a Tim Horton's on one occasion. Licensing expressed the opinion that the Appellant was using the different locations to conceal the number of children in care at any one time.

[73] Despite overwhelming evidence of the existence of a secondary location, the Appellant vacillated between denying any knowledge of the location and stating that no daycare operations were conducted from those premises.

[74] It is not usual for a licensed daycare to request that parents pick up children from a location other than the licensed facility. The totality of the evidence leads the Panel to conclude that care was provided at a second location at various times, and in excess of the licensed capacity.

[75] We agree with the MHO's conclusion that "there is ample evidence to demonstrate that you provided care at a secondary location and that you attempted to obstruct Licensing determining and documenting this fact".¹⁷

[76] We do not find anything under this heading to conclude that the Reconsideration Decision is not justified.

6. *Errors in record keeping were not "egregious".*

[77] The Appellant acknowledges failing to maintain accurate records but contends that the inaccuracies were not "egregious". The Appellant claims that errors in record keeping are minor and were quickly and appropriately addressed when identified by Licensing.

¹⁶ October 16, 2019 Complaint Investigation Form (Appeal Record, C-175 to C-178) and August 15, 2019 meeting notes (Appeal Record C-166 to C-171).

¹⁷ Pages 4-5 of Reconsideration Decision (Appeal Record, A4 to A5).

[78] Though not addressed in detail during the course of the hearing, the record before the Panel is clear that accurate records were not maintained and that Health and Safety Plans were not followed.

[79] The evidence presented outlines numerous repeat infractions over time, including incomplete attendance records, incomplete child registration forms, and fire drills and emergency plans not being practiced and recorded as required. The Appellant was cited on many occasions for record-keeping deficiencies.

[80] In addition, the Health and Safety Plan requirement that the Appellant not be alone with children pending an ongoing investigation was not followed.¹⁸

[81] Although the Appellant characterizes these errors as "not egregious", the repeated non-compliance is concerning and shows a disregard for, and an unwillingness to operate a licensed facility in accordance with, the Child Care and Licensing Regulation. The health and safety of children in care is put at risk and the quality of care for children is diminished as a result of such repeated non-compliance.

[82] We do not find anything under this heading to conclude that the Reconsideration Decision is not justified.

7. *Alternative explanation for events of November 18, 2019 (child left unattended)*

[83] Regarding the allegation that a child was left unsupervised on November 18, 2019, the Appellant claims that her husband dropped off a school age child and called the daycare to let staff know the child was there and to open the gate. Licensing Officers present observed the child being dropped off and the husband drive away.

[84] We conclude that, even accepting this version of events, the child was left alone while the staff member phoned by the Appellant's husband came to the door. Based on the evidence, it is clear that the child was dropped off and left unattended. Even if only for a matter of minutes, this is still of concern. It is the Appellant's responsibility to ensure the safety of children at all times and this system of dropping off and leaving before a staff member opens the gate for the child is not sufficient to ensure safety.

[85] We do not find anything under this heading to conclude that the Reconsideration Decision is not justified.

8. *Licensing was mistaken in their receipt of information.*

[86] The Appellant argued that Licensing was "mistaken" in reporting that they received the following information from parents:

- Parents were told by the Appellant to pick up their school age children at Tim Horton's;

¹⁸ July 4, 2019 Inspection Report (Appeal Record, C-55)

- Parents were told that children's personal belongings would be dropped off at home;
- Parents were advised to provide misinformation to Licensing if contacted.

[87] The Appellant produced no evidence to support a submission that parents were mistaken or misreporting information, and there is documentation in the record (including contemporaneous notes from interviews) to support the MHO's conclusion that Licensing Officers were not mistaken in their reports.

[88] We do not find anything under this heading to conclude that the Reconsideration Decision is not justified.

9. *Enrolment restrictions*

[89] The Appellant argued that the restriction on enrolments was limited to the number of children at the facility at a given moment; in effect it was valid to have more than the prescribed number of children attending (as distinct from being enrolled) provided they were not in the care facility at one time.

[90] This is not correct - the daycare may have as many children enrolled as it wishes but cannot provide simultaneous care to more than the prescribed number of eight children.

[91] This argument was typical of the Appellant's approach, which involved parsing the licensing requirements and trying to work around the rules. For example, she claimed that staff were "volunteering" when in charge of children in numbers in excess of the allowable limit, and at that time therefore not employed by Moonlight. As an example, reference is made to the observations of Licensing on November 18, 2019, referred to in the MHO's letter and supported by evidence in the record. These observations will be discussed further under the next heading.

[92] This argument of the Appellant also potentially explains the underlying impetus for the second location.

[93] We do not find anything under this heading to conclude that the Reconsideration Decision is not justified.

10. *Children were not cared for upstairs or off-site.*

[94] The MHO's conclusion that the Appellant has provided care offsite and has repeatedly exceeded the permissible number of children in care is amply supported by the evidence contained in the record and presented during the course of the hearing.

[95] On November 18, 2019, Licensing observed an individual, who said she was a "volunteer" for Moonlight Daycare, caring for six children at a nearby park. Licensing also observed five children in care at the licensed facility when they attended that same day.

[96] The Appellant claims that the individual who said she was volunteering was caring for the children on her own through private arrangements with parents. A list of children being cared for by the "volunteer" was provided to Licensing and several

children on the list were enrolled at Moonlight Daycare. That same day, a parent was asked to pick up their school-age child at Tim Horton's.

[97] All this leads the Panel to conclude that care was provided off-site and at times exceeded the licensed capacity.

[98] There was also evidence that the children were cared for upstairs. This is in violation of the License, which has stated since 2013 that the facility will operate on the basement level of the home only.

[99] The MHO states in her decision that "The parent I spoke with on May 22, 2021, stated that you regularly sent one of their children upstairs to be cared for under the supervision of your husband or nephew"¹⁹. The record before the panel includes notes of interviews of parents by Licensing officers where parents stated that they picked their child up from upstairs (the unlicensed portion of the house).²⁰

[100] Providing care offsite and in unlicensed portions of the home are both contraventions of the Regulation, and are particularly worrisome when it is unclear who is supervising the children, and when there are concerns about exceeding license capacity as in the present case.

[101] We do not find anything under this heading to conclude that the Reconsideration Decision is not justified.

Other issues raised by the Appellant not covered above

[102] As noted above, in the Appellant's Statement of Points, she characterizes the issues under appeal as follows:

- a) Was the Appellant denied procedural fairness by Licensing's failure to deliver the June 9, 2020 letter?
- b) Was the Appellant denied procedural fairness by the inclusion of incorrect information in her file with respect to findings that the "manager's name was not displayed" and a "family member does not have a Criminal Record check in her file"?
- c) Was the Appellant denied procedural fairness by the Respondent's failure to post all Facility Inspection Reports on its website and by its reliance on unposted reports?
- d) Will the Appellant be denied procedural fairness if forced to respond to allegations that (i) have no basis in fact and (ii) were endorsed retroactively when the change was made to conditions on her license to allow for overnight care?
- e) Was the Appellant denied procedural fairness by the failure of the Respondent to provide her with an interpreter?

[103] With regards to (a), the Panel has found that the issue of when the June 9, 2020 Licensing Decision was delivered is immaterial to this appeal, as the Appellant

¹⁹ Page 7 of Reconsideration Decision (Appeal Record, A-7).

²⁰ For example, November 20, 2019 Notes (Appeal Record, C-211 and C-213).

did receive it by August 26, 2020, did request reconsideration, and a reconsideration on the merits took place, and is the subject matter of this appeal

[104] With regards to (b) and (c), we do not find that these matters negatively impacted upon the Appellant's right to procedural fairness, but rather are examples of the Appellant's approach to Licensing; picking minor or inconsequential issues and attempting to draw far reaching conclusions from such omissions and irrelevancies. It is not clear to this Panel how paragraphs (b) and (c) could lead to a complaint of procedural unfairness in the context of the MHO's Reconsideration Decision and the evidence she considered. In any event, the factual basis upon which the complaints are made and their relevance to the issue of whether or not the MHO's Reconsideration Decision was justified was not demonstrated by the Appellant during the course of the hearing.

[105] Regarding (d)(i), as is discussed above, the Panel disagrees that the allegations "have no basis in fact". Regarding d(ii), this argument appears to be based on a misunderstanding of the legislation, which provides that there would need to be an application to provide overnight care under section 41 of the Regulation.

[106] With regards to (e), as noted above, the evidence shows that the Appellant held herself out to Licensing as fluent in English. There is no evidence that the Appellant expressed a need for an interpreter in any of her dealings with Licensing leading up to the Reconsideration Decision.

[107] The evidence before the Panel does not indicate that there were flaws in the investigative process that amounted to a breach of natural justice. Further, even if there was a defect amounting to a breach of natural justice or procedural fairness, it was curable and, in our view, was cured by this appeal proceeding.

[108] The Board and the Appellant received a complete copy of the record of the proceedings below and the parties were provided with an opportunity to submit written Statement of Points and any additional documents prior to the hearing. As earlier stated, the Board held a nine-day hearing to hear oral testimony from the Appellant, the Respondent, and both parties' witnesses. Both parties were represented by counsel. The Board held a full oral hearing into the merits of the appeal and accorded the Appellant procedural fairness to the fullest extent.

[109] As noted at paragraph 28 of this decision, the Panel also granted the parties significant latitude in order to ensure that there was a "full and fair disclosure of all matters relevant to the issues" and that each of the parties was given a full and fair opportunity to present their case.

Is the June 9, 2021 Reconsideration Decision Not Justified?

[110] The Appellant bears the burden of demonstrating that the decision of the MHO is not justified. It is not for this Panel to substitute its own opinion for that of the MHO if her decision is justified.

[111] The decision of Licensing imposed restrictions on the License. In requesting reconsideration of the Licensing Decision, the Appellant opened the decision up for review in all of its aspects.

[112] Section 17(3) of the Act provides that:

On receipt of a written response, the medical health officer may, to give proper effect to section 11,13, 14 or 16 in the circumstances,

(a) delay or suspend the implementation of an action or a summary action until the medical health officer makes a decision under paragraph

(b) confirm, rescind, vary, or substitute for the action or summary action.

[113] Accordingly, it was open for Dr. Newhouse to bring her own judgement to bear. Obviously, she saw the circumstances with far more gravity than did Licensing Officer JS and was very concerned by the Appellant's "repeated pattern of providing care in numbers, hours, and locations" that violated her License and her "pattern of evasion and dishonesty"²¹.

[114] The Panel shares these concerns regarding the Appellant's "pattern of evasion and dishonesty" and her "repeated pattern of providing care in numbers, hours, and locations" that violated her License.

[115] As one example of the Appellant's "pattern of evasion and dishonesty", the MHO referred in the Reconsideration Decision to the letter of support provided by the Appellant on behalf of a parent who subsequently denied writing the letter, which directly contradicted the information she had provided to Licensing regarding the existence of a secondary location. Based on the first-hand evidence of this parent at the appeal hearing, this Panel finds that she did not write the letter of support that was submitted by the Appellant as part of her reconsideration application.

[116] Another example of dishonesty was the Appellant's complete denial of a secondary location until she was provided with independent proof connecting her to the address in question, after which she eventually admitted to Licensing that she rented or looked into renting the space for her nephew, while denying that it was used for childcare. Based on all of the evidence reviewed on this point, the Panel concludes that the Appellant was dishonest and evasive with respect to the secondary location.

[117] With respect to the Appellant's pattern of providing care that violated her License, two conditions were placed on the Appellant's License by Licensing effective August 9, 2020 and three additional conditions were placed on the Appellant's License by the MHO effective July 15, 2021. Even as the Appellant was requesting reconsideration of the decision to place the conditions and during the subsequent appeal to this Board, the Appellant did not comply with the conditions in place.

[118] For example, based on inspection reports from September 14 and 15, 2021²², Licensing found that the Appellant breached the MHO's conditions that she not enroll new children, that she advise Licensing in advance if there was any deviation in the dates and times children attended the facility, and that she notify

²¹ Reconsideration Decision, page 8 (Appeal Record, A-8).

²² Respondent's Supplementary Brief of Documents, page 165-170.

parents that the facility would cease providing care on September 15, 2021. While the Appellant stated that she told the parents that the facility may close, the parents were interviewed by Licensing and stated that the Appellant did not notify them that the facility may be closed on September 15, 2021 and did not inform them of any conditions on her License. Based on the evidence of the parents and the unlikelihood they would have enrolled their children so close to the potential date for closure of the facility, the Panel finds this allegation to be substantiated on the evidence before it.

[119] Evidence was also presented during the hearing before this Panel that the Appellant was caring for a school-age child in contravention to the condition that she not do so. This was set out in a January 14, 2022 inspection report²³ and was also corroborated by the testimony of the child's grandmother/caregiver at the appeal hearing. Therefore, the Panel finds that this allegation was substantiated on the evidence.

[120] As we noted in our decision to lift the temporary suspension (CCALB-CCA-21-A003(b)), it is deeply troubling to this Panel that the Appellant was found to be operating in contravention of the conditions on her license in January 2022 even after the issuance of the Temporary Suspension Decision, where the CCALAB clearly emphasized the importance of compliance with the Act, the Regulations and the conditions placed on her License.

[121] In addition, the Panel notes that the Appellant did not attempt to complete the required ethics training course between when she received the Licensing Decision in summer 2020 and the June 9, 2021 Reconsideration Decision. If the Appellant was unsure of the course/training she needed to take, it was incumbent on her to discuss and clarify with Licensing.

[122] Of particular concern to this Panel is the Appellant's lack of appreciation for the underlying rules and regulations that predicate the management and operation of a functioning daycare. This was repetitively demonstrated in the Appellant's historical dealings with Fraser Health and its employees, and throughout the course of the appeal hearing before this Panel.

[123] There is compelling evidence that the Appellant contravened section 7(1)(b) of the Act and various sections of the Child Care and Licensing Regulation, including by providing care in an unlicensed secondary location and in unlicensed areas of the home, exceeding the number of children in care, caring for children outside of permissible hours, leaving a child unsupervised, keeping inadequate records, and obstructing an investigation by Licensing.

[124] We note that we have not discussed or made findings with respect to all of the contraventions and findings cited by the MHO in reaching her decision to cancel the License, because we find that the above contraventions are proven on the evidence and that they justify the MHO's decision to cancel the License.

²³ Exhibit 14.

DECISION

[125] Based on all of the above, the Panel finds that the Appellant has not met the burden of proving that the decision under appeal was not justified under section 29(11) of the Act.

[126] In making this decision, we have considered all of the oral and documentary evidence presented during the hearing of this appeal, as well as all of the submissions of the parties, whether or not they are specifically referred to.

[127] For the foregoing reasons, we confirm cancellation of the License effective from May 31, 2022. The appeal is dismissed.

"Richard Margetts"

Richard Margetts, K.C., Panel Chair

"Donald Storch"

Donald Storch, Panel Member

"Shelene Christie"

Shelene Christie, Panel Member

February 7, 2023