NOTICE OF PUBLICATION BAN

In the matter of College of Early Childhood Educators and Amanda Grace Patterson this is notice that the Discipline Committee ordered that no person shall publish or broadcast the identity of, or any information that could identify, any person who is under 18 years old and is a witness in the hearing, or the subject of evidence in the hearing or under subsection 35.1(3) of the *Early Childhood Educators Act*, 2007.

DISCIPLINE COMMITTEE OF THE COLLEGE OF EARLY CHILDHOOD EDUCATORS

PANEL: Lois Mahon, RECE, Chair Geneviève Breton Jessica Christian, RECE

BETWEEN:)
COLLEGE OF EARLY CHILDHOOD EDUCATORS) Vered Beylin) For the College of Early Childhood Educators)
and))
AMANDA GRACE PATTERSON REGISTRATION # 36323	Self-represented)))
) Elyse Sunshine,) Rosen Sunshine) Independent Legal Counsel)
) Heard: May 30, 2023

DECISION AND REASONS

This matter was heard by a panel of the Discipline Committee (the "Panel") of the College of Early Childhood Educators (the "College") on May 30, 2023. The hearing proceeded electronically (by videoconference) pursuant to the *Early Childhood Educators Act, 2007*, S.O. 2007, c. 7, Sch. 8 (the "ECE Act"), *the Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020* and the College's Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee.

At the outset, the Panel noted that the hearing was being recorded in the Zoom platform at the direction of the Panel for the hearing record, and ordered that no person shall make any audio or video recording of these proceedings by any other means.

PUBLICATION BAN

The Panel ordered a publication ban following a motion by College Counsel, on consent of the Member, pursuant to section 35.1(3) of the ECE Act. The order bans the public disclosure, publication and broadcasting outside of the hearing room, any names or identifying information of any minor children who may be the subject of evidence in the hearing.

THE ALLEGATIONS

The allegations against the Member were contained in the Notice of Hearing dated April 26, 2023, (Exhibit 1) which provided as follows:

- 1. At all material times, Amanda Grace Patterson (the "Member") was a member of the College and the owner and sole operator at Caterpillar Clubhouse, an unlicensed childcare centre at the Member's home, located in St. Catharines, Ontario (the "Centre").
- 2. On or about January 22, 2021, the Member was providing childcare services at the Centre to several children, including a 16-month-old infant (the "Child"). The Member was responsible for supervising the Child when they sustained an acute, life-threatening brain injury. As a

result of the injury, the Child required emergency surgery, followed by hospitalization for approximately two months.

- 3. By engaging in the conduct set out in paragraph 2 above, the Member engaged in professional misconduct as defined in subsection 33(2) of the ECE Act, in that:
 - a) The Member failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);
 - b) The Member failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - The Member failed to observe and monitor the learning environment and take responsibility to avoid exposing children to harmful or unsafe situations, contrary to Standard III.C.2 of the College's Standards of Practice;
 - The Member failed to provide safe and appropriate supervision of children based on age, development, and environment, contrary to Standard III.C.5 of the College's Standards of Practice;
 - iii. The Member failed to know the current legislation, policies and procedures that are relevant to her professional practice and to the care and education of children, contrary to Standard IV.B.1 of the College's Standards of Practice; and/or
 - iv. The Member failed to model professional values, beliefs and behaviours with children, families, and colleagues, and/or failed to understand that her conduct reflects on her as a professional and on her profession at all times, contrary to Standard IV.C.4 of the College's Standards of Practice.
 - c) The Member acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10); and/or
 - d) The Member acted in a manner that is unbecoming a Member, contrary to Ontario Regulation 223/08, subsection 2(22).

EVIDENCE

Counsel for the College and the Member advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts (Exhibit 2), which provided as follows:

The Member

- The Member has had a certificate of registration with the College for approximately 11 years.
 She resigned her certificate of registration with the College in April 2023 and does not have a prior discipline history with the College.
- 2. At all material times, the Member was the owner and sole operator of the Centre.

The Incident

- 3. On January 22, 2021, the Member was providing childcare services at the Centre to several children, including the Child. The Member was responsible for supervising the Child when they sustained an acute, life-threatening brain injury. The Member was the only adult present at the Centre during this time. There is no evidence to establish that the Member was aware that the Child sustained the injury when it occurred.
- 4. At some point after the injury occurred, the Member put the Child down in a crib for a nap. At approximately 2:45 p.m., the Member heard stirring in the sleeping room, so she entered the room to check on the Child and noticed that the Child had vomited. The Member attempted to rouse the Child, but the Child was unresponsive. After additional failed attempts to rouse the Child, the Member immediately called the Child's mother and then 911.
- 5. The Child was unconscious at around 3:04 p.m. when Police arrived at the Centre and a police officer immediately began administering CPR until paramedics arrived. The Child was intubated and stabilized at the Emergency Department of St. Catharines Hospital. When the Child arrived at St. Catharines Hospital "the combination of his left subdural hemorrhage and significant left cerebral hemispheric cerebral edema (brain swelling) was causing acute, life-threatening inferior herniation of the brain and brainstem. [The Child's] initial CT scan also showed "edema of the right cerebral hemispheres".

- 6. The Child was then airlifted to McMaster's Children's Hospital ("McMaster"). Immediately upon arrival to McMaster, the Child underwent an emergency three-hour surgery to relieve pressure on their brain. The Child was found to have "extensive, multifocal hypoxic-ischemic brain injury, subdural hemorrhage at other locations on the left side of the head, right occipital scalp subgaleal hematoma and a fracture of the petrous part of the left temporal bone."
- 7. For 8 days post-surgery, the Child remained sedated and intubated. On February 3, 2021, the Child was transferred to McMaster's general pediatric ward for neurological rehabilitation. On February 19, 2021, the Child was discharged from McMaster and then was admitted to Holland Bloorview Kids Rehabilitation Hospital ("Holland Bloorview") and remained there for one month. In total, the Child was hospitalized for approximately two months.

Additional Information

- 8. The Child was discharged from Holland Bloorview, after making "tremendous progress". The after-effects of the injury were "limited but lingering". For a short period of time, the Child needed to wear a helmet to protect his skull as he continued to heal from surgery. The Child regained baseline developmental milestones, though experienced some difficulty with sleep regulation, and remained on anti-seizure medication.
- 9. Medical evidence, including an expert opinion by a pediatrician from McMaster's Child Maltreatment Clinic and the Child Advocacy and Assessment Program (the "Expert Opinion"), clearly established the following:
 - a. The Child's critical head injury occurred while the Child was at the Centre, "within minutes to hours" from the time the Child began exhibiting symptoms of "brain dysfunction".
 - b. The neurologic impairment which progressed to [the Child's] state at the time of the 911 call, would have begun immediately, or shortly after the traumatic event, and progressively worsened thereafter.
- 10. The Children's Aid Society ("CAS") investigated the incident (the "Incident") and verified two child protection concerns:
 - That an inflicted injury occurred to the Child, but the person/means of the injury could not be identified; and

- b. That the Child was not adequately supervised at the time of the injury, leading to the harm sustained.
- 11. Niagara Regional Police (the "Police") investigated the Incident, but suspended its investigation after determining that the medical evidence obtained would be insufficient to establish the Member's culpability to a criminal offence beyond reasonable doubt.
- 12. The Police and CAS were unable to identify the exact "mechanism of injury" in their investigations of the Incident.
- 13. The Incident had profound emotional impact on the Child's family. The Child's parents experienced "shock". The father passed out twice upon learning the extent of the Child's injuries and was described as "falling apart". Both parents sought counselling for the post-traumatic symptoms they experienced as a result of the Incident and ongoing trauma therapy was recommended for them.
- 14. The Member began operating the Centre in her home approximately two years prior to the Incident. She had not been investigated by CAS prior to the Incident and there were no prior complaints to the Ministry about the Centre. Additionally, during the CAS investigation, no concerns were noted by the Member's prior employer or parents of the children who attended the Centre.
- 15. If the Member were to testify, she would acknowledge that she was the sole caregiver of the Child and ultimately responsible for the safety of the children in her home, including the Child. The Incident was traumatic for the Member, as she has always been committed to ensuring children's safety and well-being.

Admissions of Professional Misconduct

- 16. The Member admits that she engaged in and is guilty of professional misconduct as described in paragraphs 3 to 7 above, and as defined in subsection 33(2) of the ECE Act, in that:
 - The Member failed to supervise adequately a person who was under her professional supervision, contrary to Ontario Regulation 223/08, subsection 2(2);

- b. The Member failed to maintain the standards of the profession, contrary to Ontario Regulation 223/08, subsection 2(8), in that:
 - The Member failed to observe and monitor the learning environment and take responsibility to avoid exposing children to harmful or unsafe situations, contrary to Standard III.C.2 of the College's Standards of Practice;
 - ii. The Member failed to provide safe and appropriate supervision of children based on age, development, and environment, contrary to Standard III.C.5 of the College's Standards of Practice;
 - iii. The Member failed to know the current legislation, policies and procedures that are relevant to her professional practice and to the care and education of children, contrary to Standard IV.B.1 of the College's Standards of Practice; and/or
 - iv. The Member failed to model professional values, beliefs and behaviours with children, families, and colleagues, and/or failed to understand that her conduct reflects on her as a professional and on her profession at all times, contrary to Standard IV.C.4 of the College's Standards of Practice.
- c. The Member acted or failed to act in a manner that, having regard to the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional, contrary to Ontario Regulation 223/08, subsection 2(10); and/or
- d. The Member acted in a manner that is unbecoming a member, contrary to Ontario Regulation 223/08, subsection 2(22).

THE MEMBER'S PLEA

The Member admitted to the allegations in the Agreed Statement of Facts.

The Panel received a written plea inquiry (Exhibit 3) which was signed by the Member. The Panel also conducted a verbal plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

SUBMISSIONS OF THE PARTIES ON LIABILITY

College Counsel submitted that even though the Member had resigned from the College, the College still had jurisdiction over her referable to the time she was a member.

College Counsel submitted that the facts contained in the Agreed Statement of Facts would support findings of professional misconduct.

College Counsel submitted that the Member failed to adequately supervise an infant in her care in a home based daycare. While in the Member's care, the infant sustained a life-threatening injury. It is unknown how the infant sustained the injury but it is clear that it occurred while the Member was the sole care provider. As a registered early childhood educator ("RECE"), the Member was responsible for ensuring that children in care were supervised at all times and for ensuring their safety and well-being. This was particularly the case when the Member chose to provide the care in her home without any support. The injury could have been prevented had the Member provided adequate supervision. Her conduct breached the parents' trust.

The Member's conduct breached several standards. She did not know the current legislation and policies relevant to her practice. The fact the Child suffered a life-threatening injury reflects negatively on the Member as a professional and on the profession as a whole. Her conduct erodes the public trust and was unprofessional and clearly unbecoming a RECE.

The Member did not make any submissions.

FINDINGS AND REASONS FOR DECISION

The Panel accepts that it has jurisdiction over the Member because the conduct occurred while she was still a member of the College.

Having considered the facts set out in the Agreed Statement of Facts, the Panel accepts the Member's admission and finds her guilty of professional misconduct as alleged in the Notice of Hearing.

The Panel found that the facts support the findings that the Member committed the acts as alleged.

The Member failed to adequately supervise a child under her care and monitor the environment to avoid exposing children to harmful or unsafe situations. The duty to adequately and effectively supervise children is fundamental to the RECEs professional responsibility and occurs regardless of the professional setting. Enhanced care is required when the Member is the sole caregiver.

The Member did not provide safe and appropriate supervision of children based on age, development and environment resulting in the Child sustaining a severe life-threating injury. While the cause of the injury remains unknown, had the Child been appropriately supervised, the injury could have likely been prevented or noticed in a more timely fashion.

The Member failed in carrying out her professional responsibilities to the Child and their family and this was unbecoming a member of the profession.

The Panel was extremely concerned by the conduct here and wishes to ensure that all RECEs are aware that the lack of supervision – even for a brief moment – can result in serious and tragic outcomes.

POSITION OF THE PARTIES ON PENALTY

Counsel for the College and the Member made a joint submission as to an appropriate penalty and costs order (the "Proposed Order"). The parties submitted that the Panel should make an order as follows:

- 1. Requiring the Member to appear before a Panel of the Discipline Committee to be reprimanded within 60 days of the date of the Order.
- 2. Directing the Registrar to suspend the Member's certificate of registration for a period of 14 months. The suspension will take effect from the date the Member reinstates her certificate of registration with the College, and will run without interruption as long as the College has not otherwise prohibited the Member from practising or suspended the Member for any other reason.

3. Directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:

Mentorship

- a. Prior to the Member commencing or resuming employment as a RECE or engaging in the practice of early childhood education, as defined in section 2 of the ECE Act, the Member, at her own expense, will arrange a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,
 - iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
 - v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
 - vi. is pre-approved by the Director of Professional Regulation (the "Director"). In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Mentor.

For clarity, once the suspension in section 2 above ends, the Member can commence or resume employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

b. Within 14 days of commencing or resuming employment as an RECE, the Member will ensure that the Director is notified of the name, address and telephone number of all employers.

- c. The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
 - i. the Panel's Order,
 - ii. the Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty and Costs, and
 - iv. the Panel's Decision and Reasons.
- d. The Member will meet with the Mentor at least every 2 weeks after the Mentor has been approved by the Director to discuss the following subjects:
 - i. review of the College's Code of Ethics and Standards of Practice,
 - ii. the acts or omissions by the Member, which resulted in the Discipline Committee finding the Member guilty of professional misconduct,
 - iii. the potential consequences of the misconduct to the parents/children affected, and to the Member's colleagues, profession and self,
 - iv. strategies for preventing the misconduct from recurring, and
 - v. the Member's daily practice and any issues that arise, to ensure that she is meeting the College's Standards of Practice (without disclosing personal or identifying information about any of the children under the Member's care, or clients of her employer(s)).
- e. After a minimum of 7 sessions, the Member can seek the Director's permission to stop participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:
 - i. the dates the Member attended the sessions with the Mentor,
 - ii. that the Mentor received a copy of the documents referred to in paragraph 3(c),

- iii. that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and
- iv. the Mentor's assessment of the Member's insight into her behaviour.
- f. All documents delivered by the Member to the College or the Mentor will be delivered by email, registered mail or courier, and the Member will retain proof of delivery.
- g. The College may require proof of compliance with any of the terms in this Order at any time.
- 4. Requiring the Member to pay the College's costs fixed in the amount of \$1,000, within 10 months of the date of this Order.

Submissions of the College on Penalty and Costs

Counsel for the College submitted that failure to supervise is the most common type of misconduct. This case, however, stands out in severity, given the Child's catastrophic injuries.

College Counsel submitted that the penalty and costs order agreed to in the Joint Submission met the principles that a penalty order is required to meet. The Proposed Order sends a message broadly to members of the profession and the public that this type of conduct at issue is unacceptable and will not be tolerated. College Counsel argued that there are too many cases of failure to supervise and members need to be aware that even a brief failure to supervise can have devastating consequences for children and families.

College Counsel further submitted that the Proposed Order would deter other members from engaging in similar conduct. The Proposed Order is specific enough to deter the Member from engaging in misconduct should she ever return to practice. College Counsel submitted that the Proposed Order would ensure remediation and rehabilitation of the Member in the event she wished to return to practice.

College Counsel also submitted that the penalty must take into account the aggravating and mitigating factors in this case, and presented four aggravating factors and two mitigating factors for the Panel's consideration:

Aggravating Factors:

- The Child was an infant and was physically and emotionally dependent on the Member for their well-being.
- 2. The Child sustained a life-threatening brain injury requiring surgery and two months stay in hospital.
- 3. The Child continued to have limited but lingering after-effects requiring medication.
- 4. The family impact cannot be overstated, they were devastated and suffered profound trauma which will have lasting impact for the rest of their lives.

Mitigating Factors:

- By pleading guilty, the Member took responsibility for her failure to supervise and demonstrated insight. She saved the College the cost and time of a lengthy, expensive, contested hearing.
- 2. The Member was registered as a RECE for 11 years before she resigned. She has no prior history of misconduct.

College Counsel added one additional point which was noted as an absence of an aggravating factor: this was an isolated incident and not part of a pattern of conduct.

College Counsel submitted that although this case is unique and had a tragic outcome, the Proposed Order was consistent with the range of penalties given in other cases, and provided four cases for the Panel's consideration:

- 1. College of Early Childhood Educators v. Mimruza Rahman, 2021 ONCECE 6
- 2. College of Early Childhood Educators v. Gurpreet Lubana, 2018 ONCECE 6
- 3. College of Early Childhood Educators v. William George De Wit, 2021 ONCECE 12
- 4. College of Early Childhood Educators v. Carrie ChunJuan Tan, 2021 ONCECE 1

College Counsel submitted that these cases represented conduct of a similar nature and established that the Proposed Order was the highest suspension penalty given in a lack of supervision case but was appropriate given the circumstances of this case. It was hence proportionate and reasonable and would not bring the administration of justice into disrepute.

Submissions of the Member on Penalty and Costs

The Member was remorseful and expressed that she wished there had been a different outcome. She submitted that this event was also traumatic for her and her family and that it will forever stay with her.

PENALTY DECISION

The Panel accepted the joint submission on penalty and makes the following order as to penalty:

- 1. The Member is required to appear before the Panel to be reprimanded within 60 days of the date of this Order.
- 2. The Registrar is directed to suspend the Member's certificate of registration for a period of 14 months. The suspension will take effect from the date the Member reinstates her certificate of registration with the College, and will run without interruption as long as the College has not otherwise prohibited the Member from practising or suspended the Member for any other reason.
- 3. The Registrar is directed to impose the following terms, conditions and limitations on the Member's certificate of registration:

Mentorship

- a. Prior to the Member commencing or resuming employment as an RECE or engaging in the practice of early childhood education, as defined in section 2 of the ECE Act, the Member, at her own expense, will arrange a mentoring relationship with a Mentor, who:
 - i. is an RECE in good standing with the College,
 - ii. is employed in a supervisory position,
 - iii. has never been found guilty of professional misconduct and/or incompetence by the Discipline Committee of the College,

- iv. is not currently found to be incapacitated by the Fitness to Practise Committee of the College,
- v. is not currently the subject of allegations referred to the Discipline Committee or the Fitness to Practise Committee of the College, and
- vi. is pre-approved by the Director. In order to pre-approve the Mentor, the Member will provide the Director with all requested information, including (but not limited to) the name, registration number, telephone number, address and résumé of the Mentor.

For clarity, once the suspension in section 2 above ends, the Member can commence or resume employment as an RECE after arranging a mentorship relationship with a pre-approved Mentor.

- b. Within 14 days of commencing or resuming employment as an RECE, the Member will ensure that the Director is notified of the name, address and telephone number of all employers.
- c. The Member will provide the Mentor with a copy of the following documents within 14 days of being notified that the Mentor has been approved by the Director, or within 14 days after the release of such documents, whichever is earliest:
 - i. the Panel's Order,
 - ii. the Agreed Statement of Facts,
 - iii. the Joint Submission on Penalty and Costs, and
 - iv. the Panel's Decision and Reasons.
- d. The Member will meet with the Mentor at least every 2 weeks after the Mentor has been approved by the Director to discuss the following subjects:
 - i. review of the College's Code of Ethics and Standards of Practice,
 - ii. the acts or omissions by the Member, which resulted in the Discipline Committee finding the Member guilty of professional misconduct,

- iii. the potential consequences of the misconduct to the parents/children affected, and to the Member's colleagues, profession and self,
- iv. strategies for preventing the misconduct from recurring, and
- v. the Member's daily practice and any issues that arise, to ensure that she is meeting the College's Standards of Practice (without disclosing personal or identifying information about any of the children under the Member's care, or clients of her employer(s)).
- e. After a minimum of 7 sessions, the Member can seek the Director's permission to stop participating in the mentorship sessions by providing the Director with a report by the Mentor that sets out the following:
 - i. the dates the Member attended the sessions with the Mentor,
 - ii. that the Mentor received a copy of the documents referred to in paragraph 3(c),
 - iii. that the Mentor reviewed the documents set out in paragraph 3(c) and discussed the subjects set out in paragraph 3(d) with the Member, and
 - iv. the Mentor's assessment of the Member's insight into her behaviour.
- f. All documents delivered by the Member to the College or the Mentor will be delivered by email, registered mail or courier, and the Member will retain proof of delivery.
- g. The College may require proof of compliance with any of the terms in this Order at any time.

REASONS FOR PENALTY

The Panel understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate registered early childhood educators. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where

appropriate, rehabilitation and remediation. The penalty should be proportionate to the misconduct.

In considering the joint submission, the Panel was mindful that a jointly proposed penalty should be accepted unless its acceptance would bring the administration of justice into disrepute or it is otherwise not in the public interest.

Initially the Panel had concerns that the penalty as agreed to by both parties was too lenient given the severity of the injury sustained by the Child. However, after receiving further submission from the parties and careful deliberations, the Panel recognized the high threshold of refusing a joint submission and as such concluded that it was not in the public interest to interfere. The Supreme Court of Canada has stated that the public interest test is a very stringent one and that joint submissions should not be rejected unless the penalty is so unhinged that it would lead a reasonable person to believe that the justice system has broken down. While the Panel had concerns, we could not say that this penalty would meet that test.

The 'Member's conduct was unprofessional, but not dishonorable or dishonest. There is no evidence that she lied or tampered with evidence, nor did she walk away from the situation. Although tragic, one cannot focus solely on the outcome, one must consider the acts/omissions leading up to it and whether the penalty was proportionate to that misconduct.

The Panel expressed concern at the increasing number of cases involving lack of supervision. It is the obligation of RECEs to ensure a safe and secure age-appropriate environment devoid of harm. The Panel wants to send a clear message to the membership that a lack of supervision can result in tragic circumstances and urges the College to continue seeking severe penalties in the future.

ORDER AS TO COSTS

Subsection 33(5)(4) of the ECE Act provides that in an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct

17

¹ R v. Anthony-Cook, 2016 SCC 43.

to pay all or part of the College's legal costs and expenses, investigation costs and hearing costs.

The parties are in agreement with respect to costs and the amount of costs to be ordered. The Panel agrees that this is an appropriate case for costs to be awarded and the amount proposed by the parties is reasonable.

The Panel orders that the Member pay the College its costs, fixed in the amount of \$1,000 to be paid within 10 months of the date of the Order.

I, Lois Mahon, sign this decision and reasons for the decision as Chair of this Discipline panel and on behalf of the members of the Discipline panel.

JaroMallo RECE	June 20, 2023	
Lois Mahon, RECE, Chair	Date	