

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary  
Immediate Suspension of the Family  
Child Care License of Cindi Nouis To  
Provide Family Day Care

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above matter came on for a contested case hearing before Administrative Law Judge M. Kevin Snell (ALJ) at the Hennepin County Health Services Building, 525 Portland Avenue, Minneapolis, Minnesota 55415, on January 18, 2012. The hearing record closed on February 1, 2013, the deadline for all post-hearing submissions.

Grace C. Song, Assistant Hennepin County Attorney, Minneapolis, Minnesota, appeared on behalf of the Department of Human Services (Department) at the hearing. Cindy Nouis (Licensee) appeared on her own behalf without legal counsel.

**STATEMENT OF THE ISSUE**

Has the Department established that there is reasonable cause to believe that a failure by Licensee to comply with applicable law or rule, the actions of Licensee or other individuals, or conditions in the program, pose an imminent risk of harm to the health, safety or rights of children served by Licensee?

The Administrative Law Judge concludes that there are articulable facts or circumstances which would provide the commissioner with a reasonable suspicion to believe that children in Licensee's care are at imminent risk of harm.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Until December 7, 2012 when her Class A license was temporarily suspended, Licensee was actively licensed to operate a day care program in her home in Brooklyn Park, Minnesota.<sup>1</sup>

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<sup>1</sup> Testimony of Cindi Nouis and Cassandra Dutrieuille, Licensor for the Hennepin County Human Services and Public Health Department (the County); Exhibits 10 and 14.

## Licensee's Licensing History

2. Licensee has been licensed to provide family child care for 20 years. Licensee's current Class A Family Child Care license states that it is effective between January 1, 2011 and October 1, 2012.<sup>2</sup> Licensee believed that her day care license expired on the date stated on the license, October 1, 2012.<sup>3</sup>

3. Although licensed, Licensee has not cared for any non-related children for approximately two years. Licensee only provides care for one granddaughter<sup>4</sup>

## The County's Re-licensing Efforts

4. The County received Licensee's licensing renewal Application, dated August 1, 2012, on August 31, 2012. The application packet was incomplete.<sup>5</sup> At that approximate time, the County Licensor assigned to Licensee changed.<sup>6</sup>

5. By telephone contact with a County Licensor, Licensee agreed to a September 10, 2012 relicensing visit. Prior to the scheduled visit, Licensee called her former Licensor to cancel the visit due to a family emergency.<sup>7</sup>

6. The current Licensor was unaware of the cancellation of the relicensing visit appointment and arrived at the home at the 10:00 a.m. appointed time. There was no answer at the door and the Licensor called Licensee's home multiple times as she was sitting in her car in Licensee's driveway. The Licensor also left voicemail for Licensee. Upon returning to her office, the Licensor received the message from the former Licensor that Licensee had cancelled the visit.<sup>8</sup>

7. The Licensor made numerous attempts to contact Licensee, both by telephone and drop in visits to the home, between September 10 and November 9, 2012, without success.<sup>9</sup>

8. On October 31, 2012, the County sent Licensee a letter stating that:

- Licensee's license would expire on November 1, 2012;
- A non-negotiable licensing visit would occur on November 9, 2012; and
- Failure to have the licensing inspection completed would result in revocation of Licensee's day care license.

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<sup>2</sup> *Id.*; Ex. 1.

<sup>3</sup> Test. of C. Dutrieuille; Ex. 5.

<sup>4</sup> Test. of C. Nous.

<sup>5</sup> Exs. 1 and 3; Test. of C. Dutrieuille and C. Nous.

<sup>6</sup> Test. of C. Dutrieuille; Ex. 2.

<sup>7</sup> *Id.*; Exs. 1 and 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

9. Licensee has a patterned history of cancelling appointments and not following through with the County Licensors.<sup>10</sup>

### **September 23, 2012, Battery of Licensee by Her Husband**

10. During the evening of September 23, 2012, Licensee and her husband engaged in an argument for what her husband perceived as her being “messy.” After a series of Licensee slamming doors, her husband shoved her to the floor near the upstairs bedrooms, where Licensee hit her face, causing her nose to bleed. Licensee called 911, the police arrived, and her husband was arrested for domestic abuse.<sup>11</sup>

11. On October 22, 2012, Licensee’s husband was convicted of fifth degree domestic assault, a misdemeanor.<sup>12</sup>

### **Disqualification of Licensee’s Husband**

12. The licensing background check revealed Mr. Nouis’ arrest.<sup>13</sup>

13. On October 2, 2012, Mr. Nouis was sent a disqualification letter, stating that he is disqualified from direct contact with, or access to, persons served by Licensee. He did not request reconsideration of the disqualification.<sup>14</sup>

### **Additional Findings**

14. Licensee applied for and received an Order for Protection (OFP) against her husband on November 1, 2012. The OFP precludes Licensee’s husband from returning to the day care home, except, in the company of a police officer, to retrieve his personal belongings<sup>15</sup>

15. Licensee and her husband are in the process of a divorce and selling their home.<sup>16</sup>

16. Licensee’s husband has not returned to their home since being arrested on September 23, 2012.<sup>17</sup> The County had no knowledge of this fact prior to the hearing in this proceeding.<sup>18</sup>

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<sup>10</sup> Testimony of Timothy Hennessey, Quality Assurance Specialist for the County; Ex. 3.

<sup>11</sup> Ex. 7.

<sup>12</sup> Ex. 6.

<sup>13</sup> Ex. 8; Test. of C. Dutrieuille.

<sup>14</sup> *Id.*

<sup>15</sup> Ex. 12; Test of C. Nouis.

<sup>16</sup> Test of C. Nouis.

<sup>17</sup> *Id.*

<sup>18</sup> Test. of C. Dutrieuille.

17. Licensee was not concerned about not relicensing her current home because she will be moving, and did not want to subject any future day care children to the disruption that a move would cause.<sup>19</sup>

18. Licensee appealed the TIS order because she thought it would preclude her from caring for her granddaughter. This also concerned her because her other adult son will also have a child soon and Licensee wants to be able to care for her two grandchildren.<sup>20</sup>

19. The TIS does not preclude Licensee from caring for her grandchildren.<sup>21</sup>

### **Procedural Findings**

20. On December 7, 2012, the County Quality Assurance Specialist recommended that the Department issue an Order of Temporary Immediate Suspension (“TIS”) of Licensee’s license.<sup>22</sup>

21. On December 7, 2012, the Department issued Licensee a TIS.<sup>23</sup>

22. Following a timely appeal of the TIS by Licensee,<sup>24</sup> the Department issued a Notice of and Order for Hearing (“Notice”) on December 14, 2012, scheduling a contested case hearing for January 18, 2013. The Notice contained no allegations that Licensee violated any day care laws or rules. The Notice stated that the basis for the TIS was “a result of Cindi Nouis’ denial of access to the Commissioner to conduct her relicensing.”<sup>25</sup>

23. On January 8, 2013, the ALJ issued a Prehearing Order and Protective Order.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Human Services have authority to consider and rule on the issues in this contested case proceeding pursuant to Minn. Stat. §§ 14.50 and 245A.08.<sup>26</sup>

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<sup>19</sup> Test of C. Nouis.

<sup>20</sup> *Id.*

<sup>21</sup> Test. of T. Hennessey.

<sup>22</sup> Test. T. Hennessey; Ex. 1.

<sup>23</sup> *Id.*

<sup>24</sup> Ex. 11.

<sup>25</sup> Notice and Order for Hearing.

<sup>26</sup> Minnesota Statutes are cited to the 2010 Edition.

2. The Department gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule, except that the Notice failed to comply with the requirements of Minn. Stat. § 14.58 and Minn. R. 1400.8550.

3. The purpose of family child care licensure statutes and rules is to ensure that minimum levels of care and service are given and to protect the care, health and safety of children.<sup>27</sup>

### **Temporary Immediate Suspension Standards and Reasonable Cause**

4. Minn. Stat. § 245A.07, subd. 2, provides, in applicable part:

If the license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the commissioner shall act immediately to temporarily suspend the license.

5. In order to maintain a temporary immediate suspension under Minn. Stat. § 245A.07, subd. 2, the Department must show that reasonable cause exists to believe that Licensee's failure to comply with applicable law or rule or the actions of other individuals, poses a current imminent risk of harm to the health, safety, or rights of persons served by her.

6. "Reasonable cause" for the purpose of a temporary immediate suspension means:

there exist specific articulable facts or circumstances which provide the commissioner with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.<sup>28</sup>

7. In its Notice and Order for Hearing, the Department alleged no violations of any applicable laws or rules. The Notice failed to meet the requirements of Minn. Stat. § 14.58 and Minn. R. 1400.8550.

### **Department Access to Day Care Residences**

8. Minn. Stat. 245A.04, subd 5 provides in relevant part as follows:

**Commissioner's right of access.** When the commissioner is exercising the powers conferred by this chapter . . . the commissioner **must be given access to the physical plant and grounds where the program is provided**, documents and records, including records maintained in electronic format, persons served by the program, and staff whenever the program is in operation and the information is relevant to inspections or

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<sup>27</sup> Minn. Stat. § 245A.07, subd. 1; Minn. R. 9502.0325. Minnesota Rules are cited to the 2011 Edition.

<sup>28</sup> *Id.*

investigations conducted by the commissioner. **The commissioner must be given access without prior notice and as often as the commissioner considers necessary if the commissioner is investigating** alleged maltreatment, **conducting a licensing inspection**, or investigating an alleged violation of applicable laws or rules. In conducting inspections, the commissioner may request and shall receive assistance from other state, county, and municipal governmental agencies and departments. The applicant or license holder shall allow the commissioner to photocopy, photograph, and make audio and video tape recordings during the inspection of the program at the commissioner's expense. . . . **Failure or refusal of an applicant or license holder to fully comply with this subdivision is reasonable cause for the commissioner to deny the application or immediately suspend or revoke the license.** (emphasis added)

9. Minn. R. 9502.0335, subp. 13, provides as follows:

Subp. 13. **Access to residence.** The provider shall give authorized representatives of the commissioner or agency access to the residence during the hours of operation to determine whether the residence complies with the standards of parts 9502.315 to 9502.0445. Access shall include:

A. the residence to be occupied by children in care; . . .

### **Reasonable Cause to Continue the Suspension**

10. The fact that the County has not conducted an inspection of Licensee's currently licensed residence is a sufficient circumstance that would provide, at this time, a reasonable, prudent person with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of children served by Licensee.

11. The Department has demonstrated reasonable cause to believe that there is a risk of imminent harm to the health or safety of children served by the Licensee.

12. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

13. The bases and reasons for these Conclusions are those expressed in the Memorandum that follows, and the Administrative Law Judge incorporates that Memorandum into these Conclusions.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

## RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that: the Order of Temporary Immediate Suspension suspending the family child care license of Licensee be **CONTINUED**.

Dated: February 15, 2013

s/M. Kevin Snell

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M. KEVIN SNELL  
Administrative Law Judge

Reported: Digitally recorded  
No transcript prepared

## NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, 444 Lafayette Road, St. Paul MN 55164, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **MEMORANDUM**

### **Burden of Proof**

At this stage, the County, on behalf of the Department, must demonstrate the existence of circumstances sufficient to warrant a cautious person to reasonably suspect that the Licensee poses an imminent risk of harm to the health, safety or rights of persons in the Licensee's care. This is a modest standard, intended to insure that vulnerable children are protected until there can be a full hearing and final determination on the underlying circumstances.

### **Permitted Evidence**

During an expedited hearing regarding a temporary immediate suspension, the Department must present reliable oral testimony and/or reliable documentary evidence in support of a finding of reasonable cause. The Department and the Administrative Law Judge are entitled to rely on reliable hearsay evidence linking the license holder or another individual to an act that puts children at risk of imminent harm. The Department relied on the testimony of the County Licensor, and submitted documentary evidence relevant to the factual issues at issue in this proceeding.

At this stage of the process, the Administrative Law Judge's task is to determine whether there is enough reliable evidence to maintain the suspension. Whether a Licensee suffers financial hardship during a TIS is not relevant to the issue in TIS proceedings and Licensee's financial hardship was not considered by the ALJ in reaching the recommendation in this report.

### **Analysis of the Facts in Evidence**

The Department argues that imminent risk of harm exists because Licensee seemed to be avoiding the attempted relicensing visits, and doing so without explanation. The County was unable to determine what was going on with Licensee or the conditions within the program and had no knowledge that Licensee's disqualified husband was no longer residing in the home. Having a disqualified individual residing in a license home requires that the licensed program operating within that home be terminated.

For the reasons stated below, the ALJ concludes that there is relevant and reliable evidence in the record to suggest that the conditions of Licensee's program currently present an imminent risk of harm to children.

The record contains no evidence of complaints, determinations of maltreatment or neglect, disqualifications, or licensing sanctions against Licensee of any kind.

However, the unknown condition within the currently licensed home, together with Licensee's past history of cancelling licensing visits, are relevant, reliable, and specific articulable facts or circumstances which could provide a cautious and prudent

person with a reasonable suspicion that conditions in Licensee's home pose an imminent risk of harm to children in Licensee's care.

### **Conclusion**

There are sufficient reliable and relevant articulable facts in the record that would allow a reasonable, prudent person to suspect that conditions in Licensee's program present an imminent risk of harm to children in her care. Therefore, the ALJ finds that imminent risk of harm is present and respectfully suggests to the Commissioner that the TIS be continued until the County has conducted a licensing inspection.

**M. K. S.**