

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

In the Matter of the Revocation of the Family
Child Care License of Patricia Mott

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came before Administrative Law Judge Jim Mortenson for an evidentiary hearing on June 6 and 7, 2018, at the County Courthouse, 101 North Main Street, Thief River Falls, Minnesota. The record closed at the conclusion of the hearing.

Seamus Duffy, Pennington County Attorney, represents the Minnesota Department of Human Services (Department) and Pennington County Human Services (County). James Noske, Noske Law Firm, represents Patricia Mott (Licensee).

The Department and County offered 45 exhibits, of which 22 were admitted into the record. Licensee offered eight exhibits and all of them were admitted into the record. Ten witnesses testified for the Department and County: Steven U.; Ashley U.; Amanda K.; Jennifer G.; Craig Mattson; Bryce Lingen; Aria Trudeau; Ginger Alby; Melinda Treitline-Sax; and Alia Cota. Four witnesses testified for Licensee: Child A, Lonnie Mott; Leland Mott; and Licensee.

STATEMENT OF THE ISSUES

1. Is the Licensee responsible for maltreatment of a child by neglect, pursuant to Minn. Stat. § 626.556, subd. 10e(e)?
2. Is the Licensee properly disqualified for serious and recurring maltreatment of a child by neglect, pursuant to Minn. Stat. §§ 245C.15, subd. 4(b)(2) and .02, subd. 16 and 18?
3. If Licensee was properly disqualified, does the Licensee pose a risk of harm to children in her program despite her disqualification, pursuant to Minn. Stat. § 245C.22, subd. 4?
4. Did the Commissioner have reasonable cause to revoke Licensee's family child care license, and if so, was Licensee in full compliance with the laws or rules the Commissioner alleges Licensee violated at the time the Commissioner alleges Licensee violated them?

SUMMARY OF RECOMMENDATION

Licensee was responsible for maltreatment of a child by neglect. Licensee was properly disqualified for serious maltreatment of a child by neglect, but not recurring maltreatment. Licensee has not demonstrated she does not pose a risk of harm to the children she serves, and the information the Department relied on to make its determinations is correct. Therefore, Licensee's disqualification should not be set aside. Because Licensee is responsible for serious maltreatment and disqualified, because another individual in the home is disqualified, and because Licensee withheld or provided false or misleading information during the investigation, the Commissioner of Human Services (Commissioner) should uphold the revocation of Licensee's family child care license.

Based upon the evidence in the hearing record, the Judge makes the following:

FINDINGS OF FACT

I. Background

1. Licensee has been licensed to provide family child care in Pennington County for 25 years.¹

2. On October 26, 2015, Licensee was issued a correction order for failure to take a class concerning supervision.²

3. Licensee provides daycare services in her home. Licensee resides in her home with her husband, Lonnie Mott, and Child A.³ In March of 2016, Child A was 16 years old.⁴

4. Licensee's home has two stories and a basement, however the basement is primarily used for storage.⁵ The main floor is 25 feet by 25 feet and is approximately 625 square feet.⁶ The second floor is smaller than the first floor because of a sloped roof.⁷ On the second floor, there is a playroom to the left of the stairs, the bathroom is directly across from the stairs, and Child A's bedroom was to the right side of the stairs.⁸

5. Lonnie and Child A frequently rode four-wheelers and chopped wood at Lonnie's late mother's house which they called "the farm."⁹ Lonnie's brother, Leland Mott, currently lives at the farm. Despite being called the farm, there is no farming performed

¹ Testimony (Test.) of Patricia Mott.

² Exhibit (Ex.) 45 (Letter from Treitline-Sax and Sjostrand to Johnson-Piper (Jul. 13, 2016)).

³ Test. of P. Mott.

⁴ Exhibit (Ex) 23 at 4 (Police Reports).

⁵ Test. of Lonnie Mott.

⁶ Test. of Child A.

⁷ Test. of Child A; Test. of Lonnie Mott.

⁸ Test. of Child A.

⁹ Test. of Lonnie Mott.

on the property. The farm consists of approximately eight acres, half of which is wooded.¹⁰ The farm is located east of St. Hilaire, Minnesota.¹¹

6. In March of 2016, Licensee provided care for Child B and Child C among others.¹² In March of 2016 Child B and Child C were four years old.¹³ Child B and Child C were only acquainted with each other through Licensee's daycare.¹⁴

II. Incident

7. On March 7, 2016, Child C was dropped off by her mother at Licensee's house at approximately 7:15 a.m.¹⁵ It was Child C's first and only day in Licensee's care.¹⁶

8. Child A's school day ended at 3:02 p.m.¹⁷

9. After school on March 7, 2016, Child A was in an upstairs room at the daycare home with Child B and Child C, and possibly other children. Licensee was not present. Child A pulled his penis from his jeans and asked the children if they wanted to touch it. Child B used her hand to touch and shake Child A's penis. Child C did not touch Child A's penis, but witnessed Child B do so.¹⁸

III. Investigation

10. On March 11, 2016, Child C's father picked up Child C and her brother from their mother's house.¹⁹ After picking up Child C and her brother, Child C's father brought the children to his store. While Child C's father was helping a customer, Child C's stepmother was in the back of the store with the children. Child C's stepmother asked Child C about her week and Child C told her stepmother about the March 7, 2016 incident.²⁰ Child C's stepmother then told Child C's father and they brought Child C to the Thief River Falls Police Station.²¹ Child C's father reported that Child C told him that a boy at daycare had pulled out his penis; another girl had touched the boy's penis; and Licensee was not present during the incident.²²

11. Before arriving at the police station, Child C's father called and informed Child C's mother of the March 7, 2016 incident.²³ Child C's mother immediately called

¹⁰ Test. of Leland Mott.

¹¹ Test. of Child A.

¹² Test. of P. Mott.

¹³ Ex. 14 (Child C Forensic Interview Summary); Ex. 16 (Child B Forensic Interview Summary).

¹⁴ Test. of Jennifer G.; Test. of Amanda K.

¹⁵ Test. of A.K.

¹⁶ Ex. 23 at 3, 7 (Police Reports); Test. of A.K.

¹⁷ Test. of Child A.

¹⁸ Ex. 13 (Child C Forensic Interview); Ex. 14 (Child C Forensic Interview Summary); Ex. 17 (Child B Forensic Interview); Ex. 18 (Child B Forensic Interview Summary); Test. of A.K.; Test. of Amanda U.

¹⁹ Test. of Steven U.

²⁰ Test. of A.U.

²¹ Test. of S.U.; Ex. 23 at 1 (Police Reports).

²² Ex. 23 at 1 (Police Reports).

²³ Test. of S.U.; Test. of A.K.

Licensee and asked her whether there were any boys at daycare. Child C's mother also informed Licensee of what Child C had reported.²⁴ Licensee told Child C's mother that there was only a baby boy at the daycare, so the report must be false.²⁵

12. On March 14, 2016, Investigator Ginger Alby, a juvenile investigator for the Thief River Falls Police department, conducted an interview with Child C. Child C's father and stepmother were present for the interview.²⁶ Child C stated that an older boy pulled out his "pee-pee" and asked her to touch it but Child C said no.²⁷ Child C stated that another girl touched the boy's "pee-pee".²⁸

13. On March 14, 2016, Licensee was interviewed by Investigator Alby. Licensee told Alby that Child A stayed after school for robotics on March 7, 2016. Licensee explained that Child A did not come home until after 5:00 p.m. or 6:00 p.m., after being picked up by Lonnie. Licensee identified the preschool children Licensee had been caring for on March 7, and the list did not include Child B. Licensee told Alby that Child C may have been picked up by her mother before the school kids came to daycare in the afternoon. Licensee also told Alby that Child C's mother had been calling her multiple times daily to tell Licensee about Child C's father and that Child C's father was spreading untrue stories about Child C's mother. Licensee advised Alby that on March 8, 2016, Child C's mother told Licensee about what happened on March 7. Licensee also stated that Mr. Mott was present in the home all day.²⁹ All of these statements to Alby were false or incomplete.

14. On March 14, 2016, Investigator Alby contacted Mr. McGlynn, one of Child A's robotics teachers. Mr. McGlynn informed Investigator Alby that there was a robotics meeting scheduled for March 7, 2016, but the meeting was rescheduled because Mr. McGlynn was sick. Mr. McGlynn stated that there was no reason for Child A to stay after school for robotics on March 7, 2016, as all of the robotics items were locked in a trailer following the robotics competition on March 5, 2016.³⁰

15. On March 14, 2016, Investigator Alby contacted Child C's mother. Child C's mother stated that she did not learn of the March 7, 2016 incident until March 11, 2016. Child C's mother also stated that Child C did not go back to Licensee's daycare after March 7, because Child C's mother did not work the rest of that week and Child C had a fever on March 10, 2016.³¹ Child C's mother was interviewed again on March 15, 2016, and provided consistent statements.³²

²⁴ Test. of A.K.; Ex. 23 at 6 (Police Reports).

²⁵ Test. of A.K.; Ex. 23 at 8 (Police Reports).

²⁶ Ex. 23 at 3 (Police Reports).

²⁷ Ex. 23 at 3 (Police Reports).

²⁸ Ex. 23 at 3 (Police Reports).

²⁹ Ex. 23 at 4 (Police Reports).

³⁰ Ex. 23 at 5 (Police Reports).

³¹ Ex. 23 at 5 (Police Reports); Ex. 4 (Timesheet).

³² Ex. 23 at 7-8 (Police Reports).

16. On March 22, 2016, Investigator Alby conducted an interview of Lonnie.³³ Lonnie stated that he picked up Child A from school on March 7, 2016 so that they could ride four-wheelers at the farm.³⁴ Lonnie did not remember which of his vehicles, a Toyota or Avalanche, he drove to pick up Child A.³⁵ Lonnie did not remember if he and Child A stopped at home before going to the farm.³⁶

17. On March 24, 2016, Child A was interviewed by Deputy Chief Craig Mattson.³⁷ Lonnie was also present.³⁸ During the interview Child A stated that he did not recall whether he took the bus home or if Lonnie had picked him up on March 7, 2016. Child A denied being upstairs in Licensee's house at any time on March 7. Child A did not recall whether he went into the house at all. Child A continually denied pulling out his penis in front of any children.³⁹

18. On March 29, 2016, Child C underwent a forensic interview at the Family Advocacy Center in Bemidji.⁴⁰ During the interview, Child C stated that she was at Licensee's home when an older boy took out his "pee-pee" and asked her and another girl to touch it. Child C said she did not touch his "pee-pee" but the other girl did. Child C described the boy as older with unshaved facial hair under his nose.⁴¹ An independent interviewer conducted the forensic interview competently.⁴²

19. Child B underwent a forensic interview at the Family Advocacy Center on March 29, 2016, and did not share any information about the incident in question.⁴³ Later that day, Child B told her mother that Licensee had done nothing wrong and that Child A had.⁴⁴ The next day, Child B spontaneously informed her mother about the incident.⁴⁵ On March 31, 2016, Child B underwent a second forensic interview in which she stated that she had touched Child A's "wee-wee" and that Child A said "it was okay."⁴⁶ An independent interviewer conducted both forensic interviews competently.⁴⁷

20. On March 31, 2016, Licensee provided the police with a note from Bryce Lingren, Child A's football coach and teacher, stating that Child A was at a football meeting on March 7, 2016. Investigator Alby contacted Mr. Lingren to get more information about the football meeting.⁴⁸ On April 1, 2016, Mr. Lingren informed

³³ Ex. 23 at 11 (Police Reports).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Ex. 23 at 17 (Police Reports).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Ex. 13 (Child C Forensic Interview).

⁴¹ *Id.*; Ex. 14 (Child C Interview Summary).

⁴² See Ex. 13; Test. of Aria Trudeau.

⁴³ Ex. 15 (Child B Forensic Interview Mar. 29, 2016).

⁴⁴ Test. of Jennifer G.; Ex. 23 at 14.

⁴⁵ Test. of J.G.; Ex. 23 at 15.

⁴⁶ Ex. 17. (Child B Forensic Interview Mar. 31. 2016).

⁴⁷ See Ex. 17; Test. of A. Trudeau.

⁴⁸ Ex. 23 at 15 (Police Reports).

Investigator Alby that after looking at his notes, the football meeting was on March 8, 2016, not March 7, 2016.⁴⁹

21. On April 4, 2016, Mr. Lingren was interviewed by Investigator Alby. Mr. Lingren reiterated that the football meeting was held on March 8, 2016 from 3:10 – 3:40 p.m., not March 7, 2016. Mr. Lingren stated that Child A asked Mr. Lingren for a note indicating that Child A had been at a football meeting on March 7, 2016, and that Child A was frantic.⁵⁰

22. On April 6, 2016, Child A was interviewed by Investigator Alby and Deputy Chief Mattson.⁵¹ Child A's parents were present during the interview.⁵² Deputy Chief Mattson and Investigator Alby informed Child A that another child had disclosed pertinent information regarding the case. During the interview, Child A's parents became angry and stated that neither Child A nor Child C was at the home at that time and ended the interview.⁵³

IV. Procedural History

23. On March 18, 2016, the Department issued an Order of Temporary Immediate Suspension which was personally served on Licensee.⁵⁴

24. On July 13, 2016, the County notified Licensee that she was responsible for maltreatment of a minor and that she was disqualified for serious and recurring maltreatment.⁵⁵ On that same date, the County also notified Child A that he was disqualified from having direct contact with daycare children.⁵⁶

25. On July 13, 2016, the County recommended that Licensee's license be revoked, that the Department not set aside the disqualification, and not grant a variance.⁵⁷

26. On July 18, 2016, the Department issued its Order of Revocation to Licensee.⁵⁸

27. On July 20, 2016, Licensee requested reconsideration of the maltreatment determination.⁵⁹

⁴⁹ *Id.*

⁵⁰ Test. of B. Lingren; Ex. 23 at 16 (Police Reports).

⁵¹ Ex. 23 at 19 (Police Reports).

⁵² Ex. 23 at 19 (Police Reports); Test. of G. Alby.

⁵³ Ex. 23 at 18 (Police Reports).

⁵⁴ Ex. 45; Test. of Melinda Treitline-Sax.

⁵⁵ Ex. 45 (Letter from Cota to Licensee (Jul. 13, 2016)).

⁵⁶ Ex. 45 (Letter from County to Licensee (Jul. 13, 2016)).

⁵⁷ Ex. 45.

⁵⁸ Ex. 45 (Letter from Department to Licensee (Jul 18, 2016)).

⁵⁹ Ex. 45 (Letter from Noske to Yutrzenka (Jul. 20, 2016)).

28. On July 28, 2016, Child A requested reconsideration of his disqualification.⁶⁰

29. On August 9, 2016, the County denied Licensee's and Child A's requests for reconsideration.⁶¹

30. A Notice and Order for Prehearing Conference and Hearing was issued on July 28, 2016.⁶²

31. This matter was continued pending the outcome of a related criminal matter concerning Child A.⁶³

32. Any finding of fact more properly considered a conclusion of law is hereby adopted as such. Any conclusion of law more properly considered a finding of fact is hereby adopted as such.

CONCLUSIONS OF LAW

I. Jurisdiction and Notice

1. The Administrative Law Judge and the Commissioner have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50; 245A.07; and .08 (2016).

2. It is the duty of the Judge to, among other things, take "notice of the degree to which the agency has . . . (ii) fulfilled all relevant procedural requirements of law or rule. . . ."⁶⁴

3. The Department gave proper and timely notice of the hearing in this matter.

4. The Department has complied with all relevant substantive and procedural requirements of law and rule.

II. Maltreatment by Neglect

5. The Department must show the maltreatment determination was based on a preponderance of the evidence.⁶⁵

6. Maltreatment includes neglect as defined at Minn. Stat. § 626.556, subd. 2(g) (2016).⁶⁶ Neglect, for the purposes of this case, means the "failure to provide for the

⁶⁰ Ex. 45 (Letter from Child A to Yutzenka (Jul. 27, 2016)).

⁶¹ Ex. 45 (Letter from Yutzenka to Licensee (Aug. 9, 2016) & Letter from Yutzenka to Child A (Aug. 9, 2016)).

⁶² Ex. 45.

⁶³ See Administrative Record.

⁶⁴ Minn. Stat. § 14.50.

⁶⁵ Minn. Stat. § 626.556, subd. 10e(e).

⁶⁶ Minn. Stat. § 626.556, subd. 10e(f)(2) (2016).

necessary supervision . . . for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety. . . ."⁶⁷

7. "Children in care must be supervised by a caregiver."⁶⁸ Supervision of a preschooler requires the caregiver to be within sight or hearing of the "preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child."⁶⁹

8. The Department has shown that it is more likely than not that Licensee is responsible for maltreatment by neglect because she failed to intervene to protect the health and safety of preschoolers in her care.

III. Disqualification

9. An individual must be disqualified from any position allowing direct contact with persons receiving services from the license holder when a preponderance of the evidence indicates the individual has committed "serious or recurring maltreatment of a minor under section 626.556. . . ."⁷⁰

10. "Serious maltreatment includes neglect when it results in criminal sexual conduct against a child. . . ."⁷¹ Criminal sexual conduct includes an actor who is more than 36 months older than a person under 13 years of age and the actor has the victim touch the actor's intimate parts.⁷²

11. "'Recurring maltreatment' means more than one incident of maltreatment for which there is a preponderance of evidence that the maltreatment occurred and that the subject was responsible for the maltreatment."⁷³

12. The Department has shown that the maltreatment by neglect was serious.

13. The Department has not shown there was recurring maltreatment.

14. Licensee was properly disqualified for serious maltreatment, but not recurring maltreatment.

⁶⁷ Minn. Stat. § 626.556, subd. 2(g)(3).

⁶⁸ Minn. R. 9502.0365, subp. 5 (2017).

⁶⁹ Minn. R. 9502.0315, subp. 29a (2017).

⁷⁰ Minn. Stat. §§ 245C.14, subd. 1(a)(2); .15, subd. 4(b)(2) (2016).

⁷¹ Minn. Stat. § 245C.02, subd. 18(d) (2016).

⁷² Minn. Stat. §§ 609.342, subd. 1(a); .341, subd. 11(a)(ii) (2016).

⁷³ Minn. Stat. § 245C.02, subd. 16 (2016).

IV. Set-Aside

15. The Commissioner “may set aside the disqualification if the commissioner finds that the individual does not pose a risk of harm to any person served by” Licensee.⁷⁴

16. Licensee has not demonstrated that she does not pose a risk of harm to persons served in her program.

V. Revocation

17. The Commissioner may revoke a license when:

- (1) a license holder fails to comply fully with applicable laws or rules;
- (2) . . . an individual living in the household where the licensed services are provided or is otherwise subject to a background study has a disqualification which has not been set aside under section 245C.22; [or]
- (3) a license holder knowingly withholds relevant information from or gives false or misleading information to the commissioner . . . during an investigation, or regarding compliance with applicable laws or rules[.]⁷⁵

18. The application of any sanction requires consideration of “the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.”⁷⁶

19. The Commissioner must demonstrate reasonable cause for the licensing sanction.⁷⁷ If the Commissioner demonstrates reasonable cause for the licensing sanction, the Licensee may demonstrate, by a preponderance of the evidence, that she was in full compliance with the laws the Commissioner alleged were violated, at the time the Commissioner alleged the violation(s) occurred.⁷⁸

20. Reasonable cause exists to revoke Licensee’s family child care license because Licensee failed to comply with the supervision requirement in that she was not able to intervene to protect children in her care; both she and an individual living in the house have disqualifications that have not been set aside; and Licensee knowingly withheld relevant information or gave false and misleading information during the investigation.

⁷⁴ Minn. Stat. § 245C.22, subd. 4.

⁷⁵ Minn. Stat. § 245A.07, subd. 3(a).

⁷⁶ Minn. Stat. § 245A.07, subd. 1(a).

⁷⁷ Minn. Stat. § 245A.08, subd. 3(a) .

⁷⁸ *Id.*

21. Licensee has not demonstrated she was in full compliance with the laws the Commissioner alleges Licensee violated at the time the Commissioner alleges Licensee violated those laws.

RECOMMENDATION

It is **RESPECTFULLY RECOMMENDED** that:


1. The Department's determination that Licensee is responsible for the maltreatment of a child by neglect be **UPHELD**.

2. The Department's determination to disqualify Licensee for serious maltreatment, not recurring maltreatment, be **UPHELD**.

3. The Department's refusal to set-aside Licensee's disqualification be **UPHELD**.

4. The Department's revocation of Licensee's family child care license be **UPHELD**.

Dated: July 9, 2018

A handwritten signature in black ink, appearing to read 'Jm Mortenson', written over a horizontal line.

JIM MORTENSON
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2016), 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, PO Box 64254, St. Paul, MN 55164-0254, (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 (2016). 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 (2016), the Commissioner is required to serve her final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

I. Facts

This matter concerns the behavior of Licensee's child, referred to herein as Child A, as well as Licensee's supervision of the preschool children in her care. On March 7, 2016, Child A was alone with at least two preschool children in the upper level of the day care home. Child A asked them to touch his penis, and one of the preschoolers (Child B) did. The incident did not come to light until the following Friday, March 11, when Child C informed her stepmother and father of the incident. Child C's mother informed Licensee of the accusation the evening on March 11. Local police were informed the same date.

II. Credibility

The credibility of all of the individuals involved is key to this matter, because it stems from verbal recitations of alleged events. The majority of witnesses were credible. Importantly, the stories told by the two preschoolers, Child B and Child C, remained remarkably consistent, even though contextual facts varied some. This is not unusual for such young children. The children consistently, and independently, described what they saw or did that was of a sexual nature. There is no evidence to suggest the children had knowledge of the sexual nature of the incident, although Child C refused to touch Child A's penis because she believed was an inappropriate thing to do.⁷⁹

The forensic interviews conducted with these children were exceptionally professional and well conducted. The interviewer was independent and not an employee of the County. The interviewer did not ask leading questions suggesting to the children what their responses should be. The interviewer was persistent in keeping the children engaged but did not pressure or coerce them. The stories the two children have repeatedly relayed provides a preponderance of evidence in light of the credibility of Child A and his parents.

Licensee relies on Child A and her spouse in an attempt to corroborate her contrary positions. Licensee, Child A, and Licensee's husband were not credible witnesses. Their testimony, as well as stories provided to investigators, lacked details, involved shifting explanations, included missing recollections, and in some cases outright lies. This is obvious based on comparison of their stories told to the police, the stories of others, and their testimony under oath. Much, but not all, of this credibility problem is described below.

A. Licensee

The police investigation began, in earnest, on Monday, March 14, 2016. On that day, Licensee told the police investigator that the prior Monday, March 7, Child A did not

⁷⁹ Ex. 13; Ex. 14.

come home until approximately 5:00 or 6:00 p.m. According to Licensee's version of events relayed on March 14, Child A was doing something with robotics at school on March 7, and her husband, Lonnie, picked up Child A from school and brought him home. Licensee also advised the investigator she believed Child C had been picked up before school let out. However, Child A did not have robotics on March 7, 2016. Further, Child C was picked up between 4:45 and 5:00 p.m. Child C's mother punched out of work at 4:45 p.m.⁸⁰ Child C's mother took approximately ten minutes to drive from work to Licensee's house.⁸¹ Licensee did not document Child C's picked up time.⁸²

Licensee later adapted her story. By March 31, 2016, Licensee asserted that Child A had a football meeting after school on March 7. She provided a note from one of the coaches, but the note had the wrong date on it. In fact, Child A approached the coach, Bryce Lingren, frantically asking for a note about a football meeting on March 7, 2016. Without closely checking his record, Lingren provided the note. He later discovered he made an error, and that the meeting occurred on Tuesday, March 8, from 3:10 to 3:40 p.m.

On May 26, 2016, Licensee's story veered again. This time, Child A stayed after school only to find out his robotics meeting had been cancelled. Since he missed the bus, Lonnie picked him up from school, and they went to ride four-wheelers at the farm.⁸³ These shifting explanations damage Licensee's credibility.

By the time of the hearing in this matter, Licensee changed her story all together. She testified that she could not remember doing day care on March 7, 2016, but she could remember Child C being there. Remarkably, she also claimed to remember that Lonnie and Child A went to the farm after school. She could not remember whether they stopped at the day care home on the way to the farm, but did claim to remember that Lonnie had the four-by-fours in the back of his truck. Licensee's changing stories and selective memory lack credibility and show she obviously provided false or misleading information during the initial investigation.

B. Lonnie

Licensee's case was not helped by her husband, Lonnie. On March 22, 2016, Lonnie told the police investigator that he was at the daycare residence all day until he went to pick up Child A from school between 3:00 and 3:30 p.m. Then, Lonnie's memory became fuzzy, and he could not remember what vehicle he was driving: his Avalanche or his Toyota. Lonnie initially stated he and Child A went immediately to the farm to ride four-wheelers. Then Lonnie told the investigator he and Child A may have stopped at home first. Lonnie told the investigator that it was hard to remember because two weeks had passed. This entire story was very different from the ones Licensee told on March 14 (Dad

⁸⁰ Ex. 4 (Timesheet).

⁸¹ Test. of A. K.

⁸² Test of. P. Mott.

⁸³ Ex. 23 at 27

picked up Child A and came home around 5:00 or 6:00 p.m.) and later on March 31 (Child A was at a football meeting after school).

On March 24, 2016, Lonnie spoke to the investigator again. Lonnie told the investigator that he remembered picking up Child A from school on March 7, going home, and then immediately to the farm with Child A. He was not sure if Child A went into the day care residence.

Under oath at hearing, Lonnie testified he picked up Child A from school on March 7, 2016, between 3:00 and 3:30 p.m., but he was not sure whether he and Child A stopped at home before going to the farm. If there was a stop at home, it would only have been for a couple of minutes. He was confident he drove his Avalanche, because he used it to pull his four-by-fours and had worked on them all day. He also remembered that Child A had a robotics event the weekend of March 5 and 6, which is why they were going four-wheeling on Monday.⁸⁴ Lonnie's memory remarkably improved over the two year period before the hearing, when he had such a challenge a mere two weeks following the actual events. This appears to be a case of attempting to get a story consistent with other selected witnesses where one cannot rely on what actually happened. As a result, Lonnie is not a credible witness.

C. Child A

Child A also did not aid Licensee's case. According to police records, on March 14, 2016, Child A told his robotics instructor that he did not stay after school on March 7 for the robotics meeting because the instructor was ill.⁸⁵ This was contrary to Licensee's initial report to the investigator. As noted previously, Child A asked one of the football coaches for a note saying he was at a football meeting on March 7, even though Child A claimed he recalled going four-wheeling at the farm after school that day. When Child A asked for the note, he was "frantic" and told the coach, who was unable to immediately confirm the date of the meeting, that the date was March 7. At the hearing, Child A testified that he made the request because there was "stuff going on" at home and "they" needed information on Child A's whereabouts.⁸⁶ These conflicting stories and shifting explanations about his whereabouts after school on March 7 damage Child A's credibility.

On March 24, 2016, Child A met with Deputy Chief of Police Mattson, and told him that at no time was he upstairs at the day care residence on March 7 (where his bedroom is). The story he told the police became more discombobulated from there. He recalled going to the farm with his father, Lonnie, immediately after school. Yet, he could not remember whether Lonnie picked him up or whether he took the bus. Child A also could not remember whether he went into the house after school. If he did, according to Child A, it would have been to drop off his backpack, possibly upstairs in his bedroom. A second

⁸⁴ The Robotics teacher told the police investigator that there had been a Robotics event that weekend, too. Lonnie's recollection is corroborated by an uninterested source, and is deemed accurate.

⁸⁵ Ex. 23 at 5.

⁸⁶ Test. of Child A.

interview with Child A was scheduled for April 6, 2016. After the police read Child A his rights, Lonnie ended the interview.

At the hearing, Child A could remember very little. His demeanor was exceptionally distraught and certain questions flummoxed him. Other times, he was able to answer clearly and succinctly. Child A testified that he was “pretty sure it was my Dad picking me up” on March 7, 2016, after school.⁸⁷ It is unclear, and damages Child A’s credibility, why over two years after the events Child A was “pretty sure” his Dad picked him up after school, while shortly after the event, Child A could not remember whether he was picked up or not. Upon further questioning from the Judge, Child A asserted he was waiting for Lonnie right after school. He testified he had a meeting after school but could not remember what kind of meeting, football or robotics. Child A testified, with great consternation, that he called his Dad right after school to tell him that he had no meetings after school. Child A struggled to articulate what *might* have happened that day. For example, he “probably” dropped off his bag at home, but maybe not.⁸⁸ But if he did, they stopped at the house for only a few seconds. But they likely went straight out to the farm, according to Child A.⁸⁹ Child A’s testimony was not credible.

Child A also testified that the weekend immediately prior to March 7, 2016, he spent at the farm, gathering and splitting wood to sell, making trails and four wheeling. This contradicts the corroborated evidence that Child A participated in a robotics event that weekend.

These shifting stories and explanations, along with the odd behavior of the three witnesses at nearly all of the interviews with investigators or in testifying, imbue the majority of their testimony with very little credibility. As a result, any evidence stemming from their interactions with the investigators or in testimony has negligible weight.

D. The Preschool Children

The key evidence in this case lies in what two very young children told their parents and a forensic interviewer. Four-year-old Child C spent her first and only day at Licensee’s day care on March 7, 2016. Child C did not mention anything untoward about that first day to her mother that week.⁹⁰ It was not until March 11, when Child C was with her stepmother and her father, that she described seeing another child at the day care touch an older boy’s penis in a room upstairs at Licensee’s daycare. Child C relayed the story again, on March 29, 2016, during a well-conducted forensic interview with a nurse. Child C’s details about who was present when the event occurred could not be corroborated. However, the key facts were consistent over time and corroborated with the forensic interview of Child B, who actually touched the boy’s penis.

⁸⁷ Test. of Child A.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Test. of A.K.

Child B's first forensic interview on March 29, 2016, did not reveal anything about the incident. When another forensic interview was conducted on March 31, 2016, however, Child B, also a four-year-old, did volunteer the key consistent details about the incident. She stated she touched Child A's penis when he pulled it from his pants and he asked if any of the children wanted to touch it. Child B was the only child to do so, shaking it.

Child B and Child C have no relationship outside of the day care. Licensee unsuccessfully attempted to tarnish Child C's credibility by telling the police investigator about a conflict between Child C's mother and father, who were divorced and shared custody of Child C. According to those individuals, both of whom testified, the story was false. Licensee further asserted that Child A and Child C were not present at the day care at the same time. As described above, any explanations by Licensee or her immediate family members carry little weight because of their shifting stories and behavior. Given the quality of the forensic interviews, lack of motivation by Child B or Child C to concoct false stories, and due to the fact the stories are conspicuously independent and consistent concerning facts that would not be available to the average four-year-old, there is a preponderance of evidence that Child A permitted and even encouraged Child B to touch his penis, and Licensee was not around to stop it.

The family did testify that little could occur in the house without others hearing it.⁹¹ Given their collective lack of credibility, not much weight is given to this testimony. However, even if it is true, it does not mean that Child A never had Child B touch his penis in a room upstairs. To the contrary, it would support the conclusion that Licensee failed to properly supervise the preschoolers at the day care. Licensee may have been outside the home, in the basement, or left Child A supervising the children. Her location was not established. Licensee was not able to intervene in protecting the children from the sexual misconduct that occurred in the home; this was established and is enough.

III. Analysis

It is more likely than not that Licensee was not providing adequate supervision of the preschool children in her care. This failure resulted in Licensee not being able to intervene to protect them from criminal sexual misconduct. This lack of supervision, and its result, is serious maltreatment by neglect.⁹²

The evidence does not establish recurring maltreatment occurred. The Department argues that maltreatment was recurring because there were multiple children in the room where the sexual misconduct occurred.⁹³ Licensee was cited for failure to properly supervise the children, resulting in serious maltreatment by neglect. A single incident cannot constitute recurring maltreatment, which by definition required more than one incident.⁹⁴ The number of children she failed to properly supervise has no bearing on

⁹¹ Test. of Licensee; Test. of L. Mott; Test. of Child A.

⁹² Minn. Stat. § 245C.02, subd. 18(d).

⁹³ Ex. 45; Test. of Alia Cota.

⁹⁴ Minn. Stat. § 245C.02, subd. 16.

whether this violation was recurring. Further, as a result of having committed serious maltreatment by neglect, the Licensee must be disqualified pursuant to Minn. Stat. § 245C.14.

The disqualification of an individual may be set aside when the individual does not pose a risk of harm to the persons the individual serves.⁹⁵ It is up to the disqualified individual to submit “sufficient information to demonstrate that the individual does not pose a risk of harm.”⁹⁶ If the disqualified individual challenges the information relied upon to make the disqualification determination, and the Commissioner “determines that the information relied upon to disqualify the individual is correct,” the Commissioner must also rely on the following analysis to make a determination about “whether the individual has met the burden of proof by demonstrating the individual does not pose a risk of harm[.]”⁹⁷ Pursuant to statute:

- . . . the commissioner shall consider:
- (1) the nature, severity, and consequences of the event or events that led to the disqualification;
 - (2) whether there is more than one disqualifying event;
 - (3) the age and vulnerability of the victim at the time of the event;
 - (4) the harm suffered by the victim;
 - (5) vulnerability of persons served by the program;
 - (6) the similarity between the victim and persons served by the program;
 - (7) the time elapsed without a repeat of the same or similar event;
 - (8) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
 - (9) any other information relevant to reconsideration.⁹⁸

Licensee’s serious maltreatment is tied directly to the criminal sexual misconduct of Child A. Thus, the nature, severity, and consequences of the maltreatment are prominent. There was only one disqualifying event. However, the four-year-old child who handled Child A’s penis, and the other children who witnessed the sexual misconduct, were all victims of the failure to properly supervise. The consequences of Child A’s behavior for all the children, including Child A, will not be known for years, if ever. The

⁹⁵ Minn. Stat. § 245C.22, subd. 4(a).

⁹⁶ *Id.*

⁹⁷ *Id.* at subd. 4(b) & (c).

⁹⁸ *Id.* at subd. 4(b).

victims were the children served by Licensee's program, and were all vulnerable to the sexual misconduct, as well as any other harm that could befall unsupervised preschoolers.

Licensee's denial and extensive efforts to hide the sexual misconduct, and her related negligence in supervision, are all significant as well. Licensee, her child, and her spouse engaged in misinformation outright lying about whether were harmed. That is the epitome of an unsafe environment for children. The state and community cannot trust Licensee to care for children when the state, community, and parents of those children cannot rely on the statements of Licensee in regards to her actions, compliance, and protection of the children in her care. For all these reasons, the disqualification should not be set aside. Further, Licensee merely asserted that the information upon which the disqualification was wrong. Primarily, that the sexual misconduct never occurred. The information relied upon by the Department was correct.

A family child care license may be revoked when:

- (1) a license holder fails to comply fully with applicable laws or rules;
- (2) . . . an individual living in the household where the licensed services are provided or is otherwise subject to a background study has a disqualification which has not been set aside under section 245C.22; [or]
- (3) a license holder knowingly withholds relevant information from or gives false or misleading information to the commissioner . . . during an investigation, or regarding compliance with applicable laws or rules[.]⁹⁹

Further, the determination of what sanction to apply requires consideration of "the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program."¹⁰⁰

The Department has demonstrated that there is reasonable cause to revoke Licensee's family day care license. She failed to provide proper supervision of preschool children which led to one of them being a victim of, and others being witness to, criminal sexual misconduct. She is properly disqualified, and there is another disqualified person living in the household. Finally, her conduct in responding to the investigation of the criminal sexual misconduct included knowingly withholding relevant information (including that victim, Child B, was in attendance at the day care on March 7, 2016) and giving false or misleading information during the investigation, such as where Child A was and was not on March 7, 2016, where Child C was that day, and creating stories about conversations with, and motivations of, Child C's parents. The nature and severity of these violations of law warrant revocation.

⁹⁹ Minn. Stat. § 245A.07, subd. 3(a).

¹⁰⁰ Minn. Stat. § 245A.07, subd. 1(a).

IV. Conclusion

Licensee is responsible for serious maltreatment by neglect and was properly disqualified. Further, there is another disqualified individual in the daycare home. Finally, Licensee misled and provided false information to investigators. It is respectfully recommended that Licensee's family day care license be revoked.

J. R. M.