

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF HUMAN SERVICES**

In the Matter of the license Revocation of  
Ronald and Linda Strand

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This is a contested case proceeding involving an appeal from a revocation of a child foster care license conducted pursuant to Minn. Stat. § 245A.07, subd. 3(a), and § 245A.08.<sup>[1]</sup> It is also a hearing on an appeal from a determination of maltreatment pursuant to Minn. Stat. § 256.045, subd. 3, which the Commissioner has consolidated with the contested case proceeding pursuant to Minn. Stat. § 245A.085.

Administrative Law Judge Bruce H. Johnson conducted a consolidated hearing in these matters beginning at 10:00 a.m. on February 20, 2004, at the Blue Earth County Government Center, 410 South Fifth Street, Mankato, Minnesota. The hearing record closed when the hearing ended on February 20, 2004.

Michael E. Burns, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2130, appeared at the hearing as counsel for the Minnesota Department of Human Services (the Department) in connection with the contested case proceeding. Mark Lindahl, Assistant Blue Earth County Attorney, P.O. Box 3129, Mankato, Minnesota 56002-3129, appeared at the hearing as counsel for Blue Earth County (the County) in connection with the appeal from the determination of maltreatment. And Karl O. Friedrichs, Attorney at Law, 624 South Second Street, Mankato, Minnesota 56001, appeared at the hearing in both matters as counsel for the Licensees, Ronald and Linda Strand.

**THESE FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS  
ARE PUBLIC, BUT THE HEARING RECORD ON WHICH THEY ARE BASED  
CONTAINS INFORMATION THAT IS NOT PUBLIC.**

## NOTICES

This Report is only a recommendation to the Commissioner of Human Services and is not a final decision. The Commissioner will make his final decision after reviewing this report and the hearing record. In making that decision the Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation that appear in this report.

Under Minnesota Law,<sup>[2]</sup> the Commissioner may not make his final decision until after the parties have had access to this Report for at least ten days. During that time the Commissioner must give any parties adversely affected by this Report an opportunity to file objections to the Report and to present argument supporting their positions. Parties should contact the office of Kevin Goodno, Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155, to find out how to file exceptions or present argument.

The record of this contested case proceeding 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 the Administrative Law Judge of the date on which 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.<sup>[3]</sup>

## STATEMENT OF ISSUES

- (1) Whether Mr. or Mrs. Strand committed maltreatment of a foster child under their care.
- (2) Whether Mr. or Mrs. Strand has violated any of the program rules that apply to providers of family foster care.
- (3) Whether Mr. or Mrs. Strand's license to provide child foster care should be revoked because of violations of family foster care program and rules.

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

## FINDINGS OF FACT

### Background

1. Ronald and Linda Strand reside at 19385 549<sup>th</sup> Avenue in Blue Earth County, Minnesota.

2. Linda Strand has been a registered nurse for 30 years. She was employed in that capacity at St. Peter Regional Treatment Center until she retired from state service.<sup>[4]</sup>

3. Ronald Strand possesses a bachelor's degree in counseling and a master's degree in behavioral science. He also completed graduate work in sociology. Mr. Strand has been employed as a police officer for two departments, a parole officer, and a mental health practitioner working with children. He has also been trained and employed as an emergency medical technician and has served as an advanced first aid instructor.<sup>[5]</sup>

4. Mr. and Mrs. Strand previously held a child foster care license and provided care for foster children in the 1970s until about 1980.<sup>[6]</sup>

5. Sheriffs' Youth Programs is a not-for-profit corporation that, among other things, operates residential foster care programs for children. It also operates as a licenser and placement agency for child foster care under contract with the Department.<sup>[7]</sup>

6. In 1999, Sheriffs' Youth Programs issued a license to Mr. and Mrs. Strand to provide child foster care. From 1999 to 2003, that agency, in cooperation with various counties, has placed a number of foster children under the care of Mr. and Mrs. Strand. They currently have no children under care.<sup>[8]</sup>

## **Burn Incident**

7. On Friday, August 31, 2001, Mr. and Mrs. Strand had three adolescent boys, including J.F. and A.W., under care. During the late evening hours on that date, Mrs. Strand had gone to bed, and Mr. Strand was doing some paperwork downstairs.<sup>[9]</sup>

8. At approximately 10:00 p.m., Mr. Strand noted that J.F. and A.W. were both creating a disturbance in the bedroom upstairs, and he went up to investigate. The third foster child complained that he was unable to sleep because the other two were keeping him awake. Mr. Strand then decided to give J.F. and A.W. some chores to do to enable them to work off some energy.<sup>[10]</sup>

9. Mr. Strand directed J.F. and A.W. to take the trash outside and to place it in some burn barrels located on the property some twenty yards from the house. Mr. Strand specifically instructed the boys not to burn the trash but rather to leave it in the barrels for burning at a later time.<sup>[11]</sup>

10. J.F. and A.W. went outside with the trash, and Mr. Strand continued working on paperwork in the house. J.F.'s and A.W.'s movements were not visible to Mr. Strand from where he was working in the house.<sup>[12]</sup>

11. J.F. and A.W. placed the trash into the burn barrels. But rather than following Mr. Strand's instructions not to burn it, the two boys broke into a shed on the property where gasoline was stored, placed gasoline on the trash, and lit the gasoline in

order to burn the trash.<sup>[13]</sup> None of this activity was visible to Mr. Strand inside the house.<sup>[14]</sup>

12. While engaged in burning the trash, J.F. sustained a second-degree burn on the front of his right leg, measuring about six and one-half by four and one-half inches.<sup>[15]</sup>

13. The nature of the behaviors that caused J.F. to be placed into foster care were such that Mr. and Mrs. Strand knew, or should have known, that J.F. should be supervised in situations where he could foreseeably start a fire.<sup>[16]</sup>

14. Although the Strands kept their matches under lock and key in the kitchen, they either knew or reasonably suspected that J.F. and A.W. smoked cigarettes from time to time and therefore had access to means of igniting fires.<sup>[17]</sup>

15. J.F. and A.W. returned to the house after being outside for about ten to fifteen minutes. Neither foster child reported the burn to Mr. Strand. Rather, they attempted to treat J.F.'s burn by applying Vaseline and a bandage.<sup>[18]</sup>

16. At some point after J.F. and A.W. had come back into the house, Mr. Strand noticed that J.F. was limping. He asked the boys to explain what had happened, and they told him. Mr. Strand asked J.F. to roll up his pant leg. After examining the burn and the boys' attempts to treat it, the Strands removed their impromptu gauze dressing, removed the Vaseline, cleaned the burn area with a mild disinfectant, dried it, and applied burn pads to the area.<sup>[19]</sup>

17. After treating J.F.'s burn, the Strands called the emergency room of the local hospital. They described the burn and the treatment they had administered to it to emergency room personnel. Those personnel indicated that they were in the process of treating an emergency situation involving multiple victims, that the treatment that the Strands had administered appeared adequate, and that the Strands should bring A.W. to the Mankato Clinic's urgent care center in the morning rather than bringing A.W. to the emergency room that night.<sup>[20]</sup>

18. Because of the lateness of the hour and the conclusion by emergency room personnel that adequate first aid treatment had been administered, the Strands decided not to report the burn to J.F.'s case worker at Sheriffs' Youth Programs that night. Rather both they and the foster children all went to bed.<sup>[21]</sup>

19. On the morning of Saturday, September 1, 2001, Mrs. Strand removed the dressing on J.F.'s burn, examined it, and treated and dressed it again. The Strands then took J.F. to the Urgent Care Center where the burn on his leg was examined by a physician's assistant.<sup>[22]</sup> The physician's assistant did not administer any additional treatment to the burn, but further instructed the Strands on wound care and made an appointment for J.F. to be seen at the Mankato Clinic's wound care clinic the following Wednesday.<sup>[23]</sup>

20. During either the morning or the afternoon of Saturday, September 1, 2001, the Strands made telephone contact with Bonnie Stanton, who was their licensing caseworker at Sheriff's Youth Programs. The Strands informed Ms. Stanton about the burn incident, about how they had treated the burn, and about the nature of their call to the hospital emergency room on the previous night.<sup>[24]</sup> The Strands also tried to call J.F.'s probation officer, but they were unable to reach her on that Saturday morning.<sup>[25]</sup>

21. On the following Wednesday, Mrs. Strand took J.F. to the appointment at the Mankato Clinic's Wound Care Center. That Clinic gave her some medication for the wound, and no follow-up visit was scheduled.<sup>[26]</sup>

22. Sheriffs' Youth Programs, the Strands' licensing agency, did not issue any corrections orders to the Strands in connection with the burn incident involving J.F.

23. On September 28, 2001, the County's child protection team initiated an assessment to determine whether maltreatment had occurred in connection with J.F.'s burn and subsequent treatment.<sup>[27]</sup> Don Freid, a child protection specialist employed by the County conducted the investigation and assessment, which included interviews with all parties concerned and a review of medical reports.<sup>[28]</sup> When interviewed, J.F.'s physician expressed the opinion that the Strands' treatment of the burn had been appropriate.<sup>[29]</sup>

24. After completing his investigation and assessment, Mr. Freid concluded that maltreatment had not occurred and that no intervention by the County's Child Protection Services was necessary.<sup>[30]</sup>

### **Pants Cutting Incident**

25. In November 2002, Mr. and Mrs. Strand were providing foster care for A.K.,<sup>[31]</sup> a fourteen year-old boy. A.K. had a history of significant mental illness diagnoses, severe emotional and behavioral disorder, and attention deficit hyperactivity disorder (ADHD).<sup>[32]</sup> One aspect of A.K.'s disability was a tendency to engage in unpredictable emotional outbursts that resulted in disruptive behavior. Sometimes those outbursts involved behavior that was self-destructive or threatening to others.<sup>[33]</sup> Another aspect of A.K.'s disability was sometimes to perceive situations that he encountered in ways that differed from how people without disabilities would normally perceive them.<sup>[34]</sup>

26. A behavior that a number of persons involved in A.K.'s care considered inappropriate was his practice of wearing his pants so low that they did not completely cover his buttocks and that the pants legs dragged on the ground. This was an issue at his day program and school as well as at his foster home.<sup>[35]</sup> With the approval of A.K.'s county social worker,<sup>[36]</sup> the Strands had an understanding with A.K. that if he continued that behavior, they would alter his pants by cutting off and shortening the pant legs so that it would no longer be possible for A.K. to wear them in that manner.<sup>[37]</sup>

27. During the afternoon of November 11, 2002, A.K. was walking around his foster home with his pants legs so low that they were dragging on the floor, he was

stepping on them, and the pants were not completely covering his buttocks. Mrs. Strand told him to pull them up, whereupon A.K. became argumentative and abusive, but he complied.<sup>[38]</sup>

28. Later, during the early evening hours of November 11, 2002, A.K. was making his own dinner and informed Mrs. Strand that he was only planning to prepare and eat meat. Mrs. Strand told him that he would also have to eat some vegetables, whereupon A.K. became abusive and agitated.<sup>[39]</sup> Thereafter, A.K.'s behavior escalated and he started throwing things, swearing, and pounding the wall with his head and fists. Mr. Strand grasped A.K. and pulled him away from the wall. A.K. then calmed down somewhat, and Mr. Strand went into the living room.<sup>[40]</sup>

29. However, A.K. then raised the issue of how the Strands wanted to have him wear his pants, and his behavior started escalating again. He told Mr. Strand, "I'm going to kill you if you ever touch my pants." A.K. then began to hit his head against a picture window in the living room.<sup>[41]</sup> At that point, Mr. Strand grabbed hold of A.K. and brought him down to the living room floor with a take-down maneuver. A.K. cooperated with the maneuver and was unhurt by it.<sup>[42]</sup>

30. After A.K. had been on the floor for five to ten minutes and had calmed down somewhat, Mr. Strand asked his wife to get a pair of scissors to mark the location on the pant legs to which they would be shortened.<sup>[43]</sup> The scissors that Mrs. Strand provided to her husband were safety scissors that lacked sharp points and whose cutting blades were constructed in a way to prevent the blades from making cuts on a person's skin.<sup>[44]</sup>

31. The pants that A.K. was wearing at the time were athletic warm-up pants where the legs snapped together along the sides. While Mr. Strand was still restraining A.K. on the floor, he used the scissors to make a small one-inch horizontal cut on one side panel about one inch above the bottom hem of A.K.'s right pants leg. It was Mr. Strand's purpose to mark the pants for later alterations to shorten the pants legs.<sup>[45]</sup> Mr. Strand then told A.K., "We'll finish them off when you're not wearing them."<sup>[46]</sup>

32. While Mr. Strand was making the cut on the pants leg, A.K. became somewhat agitated again and was able to move his right arm free from Mr. Strand's grasp. In so doing, A.K. sustained a small cut on his right index finger when his hand hit a box of toys on the living room floor.<sup>[47]</sup>

33. After making the single cut on A.K.'s pants leg and after A.K. was calmed down, Mr. Strand released him, and the parties engaged in other activities.

34. Within an hour after the incident with A.K. occurred, the Strands called Bonnie Stanton, their caseworker at Sheriffs' Youth Programs, and related to her what had happened. Based on the information that the Strands had provided, Ms. Stanton prepared an incident report.<sup>[48]</sup>

35. Sometime during the following day, A.K. reported the incident to a mandatory reporter under the Maltreatment of Minors Act.<sup>[49]</sup>

## **Maltreatment and Licensure Proceedings:**

36. Between November 12, 2002, and January 28, 2003, Don Freid, a child protection worker employed by the County, conducted a maltreatment investigation and assessment of the incident involving A.K. that had occurred in the Strands' home on the evening of November 11, 2002. That investigation included, among other things, interviews with A.K.,<sup>[50]</sup> Mr. Strand,<sup>[51]</sup> Mr. Strand's son Michael,<sup>[52]</sup> and a written statement provided by Linda Strand.<sup>[53]</sup>

37. On February 7, 2003, the County notified Mr. and Mrs. Strand of the following maltreatment determination:

Although abuse was not determined, child endangerment was. Child protective services are not needed. The reasons for the determinations are based on interviews with yourself, [A.K.], and your son.<sup>[54]</sup>

38. On February 15, 2003, the Strands provided the County with a written request for reconsideration of its maltreatment determination.<sup>[55]</sup> And on May 6, 2003, the County denied reconsideration. The Strands subsequently requested a fair hearing pursuant to Minn. Stat. § 256.045, and this hearing on appeal of the County's maltreatment determination ensued.

39. On March 3, 2003, Sabrina Ramaeker, Director of Community Services for Sheriffs' Youth Programs, issued a correction order to the Strands citing them for violations of Minn. R. pt. 9545.0160 and pt. 9545.0090(14) as a result of the incident involving A.K. on November 11, 2003.<sup>[56]</sup> The correction order required the Strands to submit a "plan as to how to deal with client's behaviors."<sup>[57]</sup>

40. On March 25, 2003, Mr. and Mrs. Strand submitted to Ms. Ramaeker a written response to her correction order. That response included the plan that the correction order had required.<sup>[58]</sup>

41. On April 4, 2003, Ms. Ramaeker recommended to the Department that it take negative action against their family foster care license.<sup>[59]</sup>

42. On May 19, 2003, Ms. Ramaeker notified Mr. and Mrs. Strand that she had recommended to the Department that it take negative action against their family foster care license.<sup>[60]</sup> Ms. Ramaeker's recommendation at that time was that the Department place conditions on the Strand's license.<sup>[61]</sup>

43. After receiving Ms. Ramaeker's recommendation, the Department conducted further inquiries about other possible rule violations by the Strands or complaints about how they had been providing care.<sup>[62]</sup> Ms. Ramaeker responded to those inquiries on April 29, 2003, indicating that she was unable "to find clear substantiated complaints."<sup>[63]</sup> The County responded to those inquiries by providing the Department with information about the burn incident involving J.F. that had occurred on August 31, 2001.<sup>[64]</sup> The County also provided the Department with information it had about various unsubstantiated allegations about the Strands.<sup>[65]</sup>

44. On July 31, 2003, the Department issued an Order of Revocation revoking their family foster care license based on licensure rule violations associated with the incident involving J.F. and A.W. on August 31, 2001, and the incident involving A.K. on November 11, 2002.<sup>[66]</sup>

45. Mr. and Mrs. Strand subsequently made a timely appeal of the Department's decision to revoke their family foster care license, and that appeal has resulted in this contested case proceeding.

46. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

47. The Memorandum that follows explains the reasons for these Findings of Fact, and to the extent that the Memorandum may contain additional findings of fact, including findings on credibility, the Administrative Law Judge incorporates them into these Findings.

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

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

## **CONCLUSIONS**

1. Minnesota law<sup>[67]</sup> gives the Administrative Law Judge and the Commissioner authority to conduct these consolidated contested case and fair hearing proceedings and to make findings, conclusions, and recommendations or a final order, as the case may be.

2. The Department and the County gave proper and timely notice of the hearing, and they have also fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. The County has the burden of proving by a preponderance of the evidence that Mr. and Mrs. Strand committed maltreatment of a minor within the meaning of Minn. Stat. § 626.556.<sup>[68]</sup>

4. Mr. and Mrs. Strand have the burden of proving by a preponderance of the evidence that they were in full compliance with the licensure rules that the Order of Revocation charges were violated at the time those violations allegedly occurred.<sup>[69]</sup>

5. Mr. and Mrs. Strand established by a preponderance of the evidence that they were in compliance with the licensure rule governing health care in family foster homes<sup>[70]</sup> with respect to the way they managed the reporting and treatment of a burn that their foster child, J.F. sustained during the late evening hours of August 31, 2001.

6. Mr. and Mrs. Strand failed to establish by a preponderance of the evidence that they were in compliance with the licensure rules governing supervision of foster children by family foster care providers<sup>[71]</sup> with respect to the way they supervised the activities of their foster children, J.F. and A.W., during the late evening hours of August 31, 2001.

7. The County failed to establish by a preponderance of the evidence that Mr. and Mrs. Strand committed maltreatment of their foster child, A.K., within the meaning of Minn. Stat. § 626.556, subd. 2(c)(2) and subd. 10e, during the evening hours of November 11, 2002.

8. Mr. and Mrs. Strand established by a preponderance of the evidence that they submitted a timely response to a correction issued to them by their licenser, Sheriffs' Youth Programs, on March 10, 2003.

9. Mr. and Mrs. Strand failed to establish by a preponderance of the evidence that they were in compliance with the licensure rule establishing discipline standards for family foster care providers<sup>[72]</sup> with respect to the way in which they disciplined their foster child, A.K., during the early evening hours of November 11, 2002.

10. Mr. and Mrs. Strand established by a preponderance of the evidence that they were in compliance with the licensure rule prohibiting physical abuse<sup>[73]</sup> with respect to the way in which they disciplined their foster child, A.K., during the early evening hours of November 11, 2002.

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

12. The Memorandum that follows explains the reasons for these Conclusions, and to that extent, 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**

The Administrative Law Judge therefore respectfully RECOMMENDS that the Commissioner:

(1) RESCIND and SET ASIDE the County's determination that Ronald and Linda Strand committed maltreatment of a child, within the meaning of Minn. Stat. § 626.556; but

(2) IMPOSE appropriate sanctions on the family foster care license of Ronald and Linda Strand.

Dated this 22nd day of March 2004.

/s/ Bruce H. Johnson  
BRUCE H. JOHNSON  
Administrative Law Judge

Reported: Tape Recorded (four tapes); No Transcript Prepared.

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**NOTICE**

Under Minnesota law,<sup>[74]</sup> the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

## MEMORANDUM

### I. Jurisdiction

On July 31, 2003, the Department issued an Order of Revocation revoking Mr. and Mrs. Strand's license to provide family foster care. Minnesota law<sup>[75]</sup> gives holders of family foster care licenses who receive orders of revocation the right to a contested case hearing, in accordance with the provisions of the Minnesota Administrative Procedure Act.<sup>[76]</sup> The Strands made a timely request for such a hearing in connection with an appeal of that order. So Mr. and Mrs. Strand's appeal from the Department's Order of Revocation was a proper subject of the hearing conducted on February 20, 2004, and issues relating to that Order of Revocation are properly before the ALJ.

On February 7, 2003, the County notified Mr. and Mrs. Strand that it had determined that on or about November 11, 2002, they had maltreated their foster child A.K. in violation of the Maltreatment of Minors Act.<sup>[77]</sup> Minnesota law<sup>[78]</sup> gives a person determined to have maltreated a child under section 626.556 a right to a hearing before a human services referee appointed by the Commissioner. However, Minn. Stat. § 245A.085, directs that:

[h]earings authorized under this chapter and sections 256.045, 626.556, and 626.556, shall be consolidated if feasible and in accordance with other applicable statutes and rules.

Since the Strands' appeal for the Department's Order of Revocation and their appeal of the County's determination of maltreatment involved common questions of fact, the Commissioner determined that it was appropriate to consolidate the two hearings. So Mr. and Mrs. Strand's appeal from the County's determination of maltreatment was also a proper subject of the hearing conducted on February 20, 2004, and issues relating to that determination of maltreatment are properly before the ALJ.

### II. Burdens and Standards of Proof

As noted above, this case involves two separate administrative matters that have been consolidated for hearing. One of those matters is an appeal from the County's determination that Mr. and Mrs. Strand had maltreated a foster child in their care. With regard to the Strands' appeal from that determination of maltreatment, Minn. Stat. § 256.045, subd. 3b, defines the standard of proof:

The state human services referee [or, in this case, administrative law judge] shall determine that maltreatment has occurred if a preponderance of evidence exists to support the final disposition under sections 626.556 and 626.557.

Minn. R. 1400.7300, subp.5, provides that:

“[t]he party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard.

So here, the County has the burden of proving by a preponderance of the evidence that Mr. and Mrs. Strand committed maltreatment within the meaning of Minn. Stat. § 626.556.

But here, the Department’s revocation of Mr. and Mrs. Strand’s foster care license was not predicated on the County’s determination of maltreatment but rather on a number of alleged violations of other program licensure rules. Minn. Stat. § 245A.08, subd. 3, which governs appeals from imposition of licensing sanctions, provides the same standard of proof, but a somewhat different burden, with regard to the alleged violations of licensure rules:

. . . [T]he commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.

So here, once the Department demonstrated reasonable cause for taking the adverse licensing action, the burden shifted, and Mr. and Mrs. Strand bore the burden of establishing by a preponderance of the evidence that they were in compliance with the rules governing family foster care licensees.

### III.

#### **Alleged Licensure Violations Relating to the Burn Incident Involving J.F.**

##### **A. Alleged Violation of the Health Care Rule.**

The Order of Revocation alleged that Mr. and Mrs. Strand violated Minn. R. pt. 9545.0180 which provided, in pertinent part:<sup>[79]</sup>

Subpart 1. **Emergencies.** The FFH provider shall be prepared to cope with health emergencies.

A. The FFH provider shall have a plan approved by the agency for meeting medical emergencies; this plan shall include the name and phone number of the child's physician, as provided by the agency.

Subp. 3. **Report of death or serious illness or injury.** The FFH provider shall report immediately to the agency the occurrence of an unusual accident such as death or serious injury or serious illness of a foster child. A serious injury or illness shall be defined as one requiring professional medical attention.

With regard to an alleged violation of Subpart 1, Mr. and Mrs. Strand were able to establish by a preponderance of the evidence that they were, in fact, able to cope with and manage appropriately the medical emergency that arose when J.F. received a burn on his leg while attempting to burn trash. Both of them have had significant medical training. Mr. Strand discovered the burn almost immediately after it occurred. He and his wife then administered appropriate first aid, immediately contacted the hospital emergency room to determine whether further emergent care was indicated, and followed all instructions of the emergency room, urgent care center, and wound care center with regard to follow-up care. The ALJ therefore concludes that evidence established that no violation of Minn. R. pt. 9545.0180, subpart 1, occurred.

With regard to an alleged violation of subpart 3, the evidence did not establish a definitive timeline for events. But it suggested that by the time the Strands had administered first aid to J.F. and called the emergency room about his condition, it was after midnight in the early morning hours of Saturday, September 1, 2001. The Strands testified that they called Bonnie Stanton, their caseworker at the licensing agency, about twelve hours later—sometime in the morning or afternoon of September 1<sup>st</sup>.<sup>[80]</sup> When Ms. Stanton testified, she had a specific recollection of that call, remembering that Mrs. Strand had informed her about the contact with the emergency room the night before. But Ms. Stanton did not have a specific recollection of when she received that call.<sup>[81]</sup> Nevertheless, Ms. Stanton's testimony represents at least some limited corroboration of the Strands' testimony. And the Department adduced no evidence tending to challenge Mr. and Mrs. Strand's account of when they reported J.F.'s burn to the licensing agency.

The rule requires a FFH provider to “report immediately.” So a question is whether a phone call some twelve hours later violates that rule. That, in turn, depends on whether the Department adheres to a literal interpretation of “immediate” or whether it interprets that term to be dependent on the situational context of a particular medical problem. The Department presented no evidence that shed light on how the Department has customarily interpreted the requirement of “immediate” reporting. Certainly, under the circumstances of this case, it does seem not unreasonable for the Strands to have waited until the next day to report the injury once the emergency room had concluded that no emergent medical care was required. And if the twelve-hour delay in reporting did not conform to the precise language of the rule, it appears to the ALJ that it was at most a *de minimis* violation.

But there is another question that is germane—namely, whether the burn met the rule’s definition of a “serious injury” that required a report. The rule defines “serious injury” as “as one requiring professional medical attention.” Here, the evidence established that the only treatment that J.F.’s burn required and received was the first aid and aftercare that Mr. and Mrs. Strand themselves provided. The burn was examined at the urgent care center on Saturday, September 1<sup>st</sup> and at the wound care center on the following Wednesday, but there was no evidence of professional medical care being provided to J.F. on either occasion.<sup>[82]</sup> In short, the ALJ concludes that under the circumstances, Mr. and Mrs. Strand did prove by a preponderance of the evidence that they were in compliance with Minn. R. pt. 9545.0180 (Health Care in Family Foster Homes) in the way that they managed the reporting and treatment of the burn that J.S. sustained during the late evening hours of August 31, 2001.

## **B. Alleged Violation of the Supervision Rule.**

But the Order of Revocation was also based on violations of Minn. R. pt. 9545.0190 (the Physical Environment Rule), which provides in pertinent part:

Subp. 3. **Cleanliness and freedom from hazard.** The house and premises shall be reasonably clean, reasonably neat, and free from hazards that jeopardize health and safety.

D. The use of potentially hazardous material and tools shall be supervised.

Subp. 4. **Supervision of children.** Children in care shall be adequately supervised at all times.

When Mr. Strand sent J.F. and A.W. outside to deposit the trash in the burn barrels on the property, he specifically instructed them not to burn it.<sup>[83]</sup> So he did not send them outside for the purpose of using hazardous materials or tools. Rather, the question is whether he should have foreseen the possibility that they had the means to burn the trash and would attempt to do so and whether he was therefore remiss in not going out to supervise them.

The evidence established that the Strands kept gasoline stored in a locked shed. That was a reasonable precaution to prevent their foster children from gaining access to that hazardous material, and there was no evidence of anything that might have placed him on notice that the two boys might break into the shed to gain access to that gasoline. The evidence also established that the Strands kept the matches they used under lock and key.<sup>[84]</sup> There was no evidence that J.F. and A.W. obtained the means of igniting the fire by breaking into the place where the matches were locked up. On the other hand, Mr. Strand testified that foster kids had a tendency to smoke so when it took them a few extra minutes to come in, he didn't think much of it. He also went on to testify that he tried to keep cigarettes, lighters, and matches away from them "but as any foster parent will tell you, it doesn't work."<sup>[85]</sup> So, Mr. Strand suspected that J.F. and A.W. were delayed in coming back to the house because they were smoking. That necessarily means that Mr. Strand knew or should have known that they had means of igniting a fire without having to break into where the matches in the house were stored. The fact that he specifically instructed them not to burn the trash indicates an awareness of the possibility that they might try to do so using means of ignition that they sometimes used to light cigarettes. Finally, given the nature of the behaviors that caused J.F. to be placed into foster care, Mr. and Mrs. Strand knew, or should have known, that J.F. should be supervised in situations where he could foreseeably start a fire.<sup>[86]</sup> In summary, based on all of the evidence that was presented, the ALJ concludes that Mr. Strand was not in compliance with Minn. R. pt. 9545.0190, subp. 4, when he sent J.F. and A.W. out to deposit trash in the burn barrels on the evening of August 31, 2001.

## **IV.**

## **What Occurred at the Strands' Home On the Evening of November 11, 2002.**

### **A. The record before the Department.**

In reviewing the record that was before the Department when it issued its Order of Revocation, the ALJ notes that all the information that the County had provided to the Department about the November 11, 2002, incident involving Mr. Strand and A.K. was based almost exclusively on A.K.'s versions of those events. That information consisted of: (1) a report of what A.K. himself had told a mandated reporter on November 12, 2002, the day after the incident occurred;<sup>[87]</sup> (2) a Child Protection Assessment Summary prepared by the County (which appears to have been based entirely on what the mandated reporter told the County about what A.K. had related about the incident);<sup>[88]</sup> and (3) a transcript of an interview that Don Freid, a County child protection worker, and Detective Jerry Billiar of the Blue Earth County Sheriff's Office had with A.K. on November 21, 2002.<sup>[89]</sup> It apparently was not until the hearing that the County provided exhibits containing the Strands' version of events. Those consisted of: (1) a transcript of an interview that Detective had with Ronald Strand on December 4, 2002;<sup>[90]</sup> (2) a written statement of Linda Strand;<sup>[91]</sup> and (3) an interview that Mr. Freid had with the Strands' son, Michael, on January 28, 2003.<sup>[92]</sup>

### **B. A.K.'s version of events.**

The substance of what witnesses to the events of November 11, 2002, have related both in written statements and in oral testimony is largely consistent. But there are discrepancies in some of the particulars that have a material bearing on the outcome of these proceedings. At the time the events of November 11, 2002, occurred, A.K. was a fourteen year-old young man with a history of some significant mental illness diagnoses, severe emotional and behavioral disorder, and attention deficit hyperactivity disorder (ADHD).<sup>[93]</sup> This factual background necessarily raises questions about A.K.'s reliability as an informant. A specific problem with A.K.'s reliability as an informant was a tendency to misperceive cause-effect relationships and what was actually happening to him, particularly during his behavioral outbursts and when he was under stress. This was clearly evident from other incidents that had occurred at his day treatment and school program.<sup>[94]</sup> Additionally, when Mr. Freid and Detective Billiar interviewed A.K., he reported being confused and had occasional difficulty tracking with the conversation.<sup>[95]</sup> A.K. did not testify at the hearing.

According to A.K., the incident began on the evening of November 11, 2002, when Mrs. Strand told him that he was wearing his pants too low and that she was going to cut them off.<sup>[96]</sup> He said that he asked the Strands if he could just roll them up although he was aware that a consequence of wearing them too low would be having the pant legs shortened. In any event, A.K. related that Mr. Strand told him, "I don't care I am going to cut them off anyway," whereupon A. K. said, "I dare you."<sup>[97]</sup> A.K. indicated that Mr. Strand then came at him with a pair of scissors in hand,<sup>[98]</sup> that he (A.K.) ran into the living room, and that Mr. Strand followed him into the living room and brought him to the floor with a take-down maneuver. A.K. said that he cooperated with

the maneuver and was not injured during the course of it.<sup>[99]</sup> He indicated that Mr. Strand did not have the scissors in hand during the maneuver and could not account for where the scissors might have gone.<sup>[100]</sup>

While being held on the floor by Mr. Strand, A.K. indicated variously that he was lying face down or on his side and that Mr. Strand was holding either one or both of his arms behind his back.<sup>[101]</sup> A.K. went on to indicate that he struggled with Mr. Strand while on the floor, and that during the struggle he cut his right index finger on the scissors that Mr. Strand was holding.<sup>[102]</sup> However, A.K. gave somewhat inconsistent versions of the severity of the cut.<sup>[103]</sup>

Additionally, A.K. related variously that while he was on the floor that Mr. Strand “proceeded to cut the bottoms of [his] pants off with a scissor,”<sup>[104]</sup> or that Mr. Strand cut a straight line up one leg of his pants.<sup>[105]</sup>

### **C. The Strands’ version of events.**

Mr. and Mrs. Strand painted a somewhat different picture of what happened with A.K. on November 11, 2002. According to them, the problems with A.K. actually began in the afternoon on that date. Mrs. Strand said that A.K. had been walking around the house with his pant legs hanging so low that they were dragging on the floor, that A.K. had been stepping on them, and that the pants were not completely covering his buttocks. Mrs. Strand told him to pull them up, whereupon A.K. became argumentative and abusive. But he finally complied.<sup>[106]</sup>

The Strands further indicate that later on A.K. was making his own dinner and said that was only planning to eat meat. Mrs. Strand said she told him that he would also have to eat some vegetables, whereupon A.K. became extremely agitated.<sup>[107]</sup> The Strands said that his behavior escalated and that he started throwing things, swearing, and then started pounding the wall with his head and fists.<sup>[108]</sup> Mr. Strand said that he then took steps to move A.K. away from the wall and went into the living room when A.K. seemed to be calming down. But then A.K. raised the issue of how the Strands wanted to have him wear his pants, and his behavior started escalating again. Mr. Strand said that A.K. told him, “I’m going to kill you if you ever touch my pants,” and that A.K. then began to hit his head against a picture window in the living room.<sup>[109]</sup> It was at that point that Mr. Strand brought A.K. to the floor with a take-down maneuver. The Strands said that when A.K. was on the floor and had calmed down for five to ten minutes, Mr. Strand asked his wife to get a pair of scissors to mark the location on the pant legs to which they would be shortened.<sup>[110]</sup> Mr. Strand stated that he then told A.K. “we’ll finish them off when you’re not wearing them.”<sup>[111]</sup> The Strands stated the cut on A.K.’s finger was a paper cut sustained when he hit a box of toys and not a cut caused by the scissors.<sup>[112]</sup>

#### **D. Reconciling major discrepancies in the evidence.**

One major evidentiary issue relates to what appears to have been an assumption by the County's investigators that Mr. Strand cut off the bottoms of A.K.'s pants legs while A.K. was wearing them. That is certain what A.K.'s version of events seems to infer. But at the hearing, the Strands introduced the pants in question into evidence.<sup>[113]</sup> And neither of A.K.'s versions of what happened is consistent with the physical evidence. What the physical evidence indicates is that the pants were athletic warm-up pants where the legs snapped together along the sides. The right leg had a small one-inch cut along one side panel about one inch above the bottom hem. This comports with Mr. Strand's testimony that he merely marked one leg for alterations by making a small cut on it with a scissors. The cut that appears on Exhibit 27 is also consistent with how Mr. Strand described what he did when he gave a statement to a deputy sheriff a few weeks after the incident. In other words, a preponderance of the evidence failed to establish that Mr. Strand cut the bottoms of A.K.'s pants legs off while A.K. was wearing them or that Mr. Strand even attempted to do so.

Another major evidentiary issue is whether A.K. cut his finger on the scissors Mr. Strand was using to mark a pants leg for alterations. A.K.'s assertion that the scissors were the source of the cut finger was contradicted by evidence from the Strands that it was a paper cut that occurred when A.K. hit a box of toys. More important, A.K.'s account is also inconsistent with the physical evidence. The Strands also introduced into evidence the scissors that Mr. Strand used that evening.<sup>[114]</sup> They are safety scissors that have no sharp points and whose cutting blades are constructed in a way to prevent the blades from making cuts on a person's skin. The ALJ also notes that Mr. Freid, the County child protection worker who investigated this incident was sufficiently skeptical about a cut on A.K.'s finger having been caused by the scissors that he did not consider that to be relevant to his maltreatment determination.<sup>[115]</sup>

A less major, but nevertheless somewhat significant, discrepancy relates to how the whole sequence of events occurred. A.K.'s versions suggest that the immediate cause of the disruption in which his pants were cut was criticism by the Strands about how he was wearing his pants. On the other hand, what the Strands related was a gradual escalation of A.K.'s behavior throughout the day, beginning in the afternoon and culminating in the cutting of his pants at about 6:00 p.m. After weighing the evidence, the ALJ generally found the Strands' view of events to be the more reliable, and consistent with behaviors that other care providers had observed in A.K.

In the final analysis, the ALJ relied primarily on the Strands' version of events in preparing the foregoing Findings of Fact. Major reasons were those aspects of A.K.'s disability that tended to make him generally an unreliable reporter of events and consistency of the Strands' version of events with the physical evidence. Also important was the consistency of the Strands' various statements and testimony with the report they gave to Bonnie Stanton, their licensing agency caseworker. Ms. Stanton prepared a detailed incident report based on information that the Strands related to her shortly after the incident in question occurred in the evening hours of November 11, 2002.<sup>[116]</sup>

Ms. Stanton's report represents the most contemporaneous account of events. A.K. waited until he was at school the following day to relate his first account of events.<sup>[117]</sup>

There is, however, one aspect of the Strands' account of events that does not seem to fit well with the other evidence. Both of them indicated that A.K. exhibited a calm demeanor and state of mind while he was lying on the floor and while Mr. Strand was marking his pants for alterations with the scissors. Since the Strands have an interest in the outcome of these proceedings, they may have tended to minimize A.K.'s state of mind at that time. In contrast with that account, there is evidence that A.K. was obsessive about the length of his pants, that he had told Mr. Strand earlier that evening that he would kill him if he touched the pants, and that while on the floor A.K. had swung his right arm hard enough to receive a paper cut when his hand hit a box. Based on that evidence, the ALJ has found A.K.'s account that he was agitated and struggled while Mr. Strand was making the cut in his pants to be more credible.

Finally, there is the matter of the correction order that Sabina Ramaeker, Director of Foster Care for Sheriffs' Youth Programs, issued to Mr. and Mrs. Strand on March 10, 2003.<sup>[118]</sup> The Department based its Order of Revocation, in part, on a finding that the Strands failed to respond to that correction order.<sup>[119]</sup> On the other hand, the Strands testified that they did respond to that correction order and forwarded it to Ms. Ramaeker on March 25, 2003.<sup>[120]</sup> They placed into evidence a copy of what they stated to be their response to the correction order and the cover letter to Ms. Ramaeker.<sup>[121]</sup> In rebuttal, the Department presented testimony of Dan Bowman, current Vice President for Operations of Sheriffs' Youth Programs, who indicated that he could not find copies of that letter and response in the organization's files. But on cross-examination, Mr. Bowman testified that Ms. Ramaeker is no longer an employee of Sheriffs' Youth Programs, and that she was unavailable to testify or give a statement. He further conceded that Sheriffs' Youth Programs maintains two different files where those documents might be found—a file on the foster parents and a file on the foster child—and that he had only checked one of those files.

In her letter to the Department of April 29, 2003, Ms. Ramaeker indicated that the Strands had neither acknowledged the correction order nor submitted the required plan. But because she was unavailable as a witness, she was able neither to explain her basis for that conclusion nor rebut the inference that the response was contained in another file. On the other hand, Mr. and Mrs. Strand presented affirmative evidence of their compliance, and that evidence was not seriously challenged on cross-examination. Because of that, the ALJ felt compelled to conclude that the Strands had established by a preponderance of the evidence that they had been in compliance with rules requiring them to respond to the correction order in question.

#### IV.

### **The Strands Did Not Commit Maltreatment When They Attempted to Restrain A.K.'s Behaviors and Discipline Him On November 11, 2002.**

## **A. Governing law.**

After a local child welfare agency, in this case the County, receives a report of possible child maltreatment, Minn. Stat. § 626.556 requires that agency to investigate, among other things, the underlying facts and to make a determination on whether the alleged maltreatment actually occurred. Here, the County initiated such an investigation after receiving a report that the Strands may have maltreated their foster child, A.K., on the evening of November 11, 2002. And on February 7, 2003, the County issued a determination that “[a]lthough abuse was not determined, child endangerment was.”

For purposes of such determinations, the statute defines “maltreatment” as:

- (1) physical abuse as defined in subdivision 2, paragraph (d);
- (2) neglect as defined in subdivision 2, paragraph (c);
- (3) sexual abuse as defined in subdivision 2, paragraph (a);
- (4) mental injury as defined in subdivision 2, paragraph (k); or
- (5) maltreatment of a child in a facility as defined in subdivision 2, paragraph (f).<sup>[122]</sup>

The County does not contend that the Strands committed maltreatment in the form of physical or sexual abuse.<sup>[123]</sup> And the County presented no evidence tending to establish that A.K. sustained a mental injury within the meaning of Minn. Stat. § 626.556, subd. 2(k). So the issue here is whether the Strands committed “neglect” within the meaning of Minn. Stat. § 626.556, subd. 2(c).<sup>[124]</sup> That subdivision lists nine kinds of acts or omissions that can constitute “neglect.” The only one arguably at issue here is what is described in subparagraph (2)—namely, “failure to protect a child from conditions or actions that seriously endanger the child’s physical or mental health when reasonably able to do so.” And this is clearly the form of neglect that the County intended to describe when it concluded that “[a]lthough abuse was not determined, child endangerment was.”<sup>[125]</sup>

## **B. The evidence failed to establish that the Strands created conditions or acted in a way that seriously endangered A.K.’s physical or mental health.**

Minn. Stat. § 626,556 defines “mental injury” as “an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child’s ability to function within a normal range of performance and behavior with due regard to the child’s culture. By describing a mental injury in terms of an observable or substantial impairment in a child’s ability to function, the legislature clearly intended determinations of mental injury to be supported by clinical judgment. Although the ALJ has found that the actions that Mr. Strand took toward shortening A.K.’s pants on the evening of November 11, 2002, unnecessarily agitated A.K.’s mental status and escalated a behavioral outburst, what occurred falls short of being a

mental injury, much less the kind of “serious endangerment” to A.K.’s mental health that Minn. Stat. § 626,556, subd. 2(c)(2) requires.

So what remains is to determine whether Mr. Strand’s actions seriously endangered A.K.’s physical health. The evidence failed to establish that the take-down maneuver that Mr. Strand employed when A.K. began displaying destructive behavior was inappropriately executed. In fact, A.K. stated that it caused him no harm. And as noted above, a preponderance of the evidence established that Mr. Strand merely used scissors to mark A.K.’s pants for later alteration and that he did not actually cut the bottoms off the pants legs or attempt to do so. Moreover, physical evidence established that the scissors that Mr. Strand used were safety scissors that lacked sharp points and that had blades that made it difficult, if not impossible, to cut skin. Additionally, the County was unable to substantiate that the scissors caused a cut that A.K. had on his right index finger. In short, the County failed to establish by a preponderance of the evidence that anything occurred to A.K. in the early evening hours of November 11, 2002, that met the statutory standard of danger of *serious* physical harm. So the evidence simply did not substantiate the County’s conclusion that “[t]here was a high degree of potential harm to A.K. from Mr. Strand while cutting A.K.’s pants (while still in them) off against his will.” So, for the reasons set forth above, the ALJ concludes that the County’s determination of maltreatment should be set aside.

## VI.

### **Alleged Licensure Violations Relating to Mr. Strand’s Interactions with A.K.**

But the Department did not rely on the County’s determination of maltreatment as a basis for its Order of Revocation. Rather, the Department based that Order on what it contends were licensure violations that the Strands committed during their interactions with A.K. on the evening of November 11, 2002. First, the Order cites a violation of Minn. R. pt. 9545.0090 (Personal Qualities of Foster Family Home Applicants), specifically the following requirements for family foster care providers:

B. Satisfactory compliance: In order to protect children in foster care and assure them the maximum opportunities for growth and development, each family caring for children shall be evaluated on the following essential elements:

(3) be in touch with their own feelings, be able to express those feelings, and have a capacity to look at themselves realistically as to the kinds of children they can accept and work with;

(6) have the ability to deal with anger, sorrow, frustration, conflict, and other emotions in a manner which will build positive interpersonal relationships rather than in a way that could be emotionally or physically destructive to other persons;

- (7) have the ability to give positive guidance, care, and training to a child according to the child's stage of growth, special abilities, and limitations.
- (8) Have the ability to use discipline in a constructive rather than destructive way;
- (14) Be able to constructively resolve problems when difficulties arise;
- (16) Have an ability to openly discuss their attitudes about persons with differing life styles and philosophies and a capacity to accept people who are different from themselves.

Based on all of the evidence, the ALJ concludes that Mr. and Mrs. Strand failed to establish by a preponderance of the evidence that they met those standards in the way they handled A.K.'s behavioral problems on the evening of November 11, 2002. Mr. Strand testified that he used the scissors that evening to mark A.K.'s pants for alteration because of A.K.'s short attention span and the need to establish an immediate cause and effect relationship between the behavior of wearing the pants too low and the consequence of having them altered to prevent that. That is a legitimate consideration. But the ALJ agrees with the Department that the means selected—that is, using scissors to cut the pants—failed to meet the standards set forth Minn. R. pt. 9545.0090 under the circumstances.

First of all, A.K.'s wearing his pants too low was not what initially triggered his self-destructive behavior that evening. Rather, it was not being able to eat what he wanted to eat. Second, while there was evidence that A.K. was wearing his pants too low earlier in the afternoon, there was no evidence that that was the case when A.K. raised that issue during his outburst in the evening. Rather, the evidence suggests that A.K. raising the issue during his tantrum was a delayed reaction to earlier criticism. In other words, there appears to have been no immediate causal link between the inappropriate behavior and the consequence. Third, Mr. Strand stated that A.K. understood that Mr. Strand was only attempting to mark the pants and not trying to cut them off and alter them while A.K. was wearing them. But the evidence suggests that that was not how A.K. was interpreting what was happening because on the following day he characterized what had happened as "cutting his pants legs off." Finally, scissors can be interpreted as a weapon, especially by a person with disabilities like A.K. Using that instrument to mark A.K.'s pants legs for alterations shortly after A.K. had engaged in two significant self-destructive episodes falls short of the rule's standards for disciplinary judgment. For the foregoing reasons, the ALJ concludes that Mr. and Mrs. Strand failed to establish by a preponderance of the evidence that they were in compliance with Minn. R. pt. 9545.0090 during their interactions with A.K. in the early evening hours of November 11, 2002.

The Order of Revocation also charges non-compliance with Minn. R. pt. 9545.0160 (Prohibition Against Abuse). Although subparts A and B do refer to punishment, the thrust of the rule is to prohibit abusive punishments. Here, shortening

A.K.'s pants legs was not in itself an abusive punishment. A.K.'s county social worker gave the Strands permission to employ that disciplinary measure, if necessary.<sup>[126]</sup> Rather, beginning to take that disciplinary measure under the particular circumstances represented substandard disciplinary judgment, rather than abuse. And, in fact, the County's determination of maltreatment was predicated on neglect through endangerment and specifically not on abuse. In short, the ALJ also concludes that Mr. Strand mishandled the situation, but not in a way that rose to the level of abuse. The ALJ therefore concludes that Mr. and Mrs. Strand did establish by a preponderance of the evidence that they were in compliance with Minn. R. pt. 9545.0160 during their interactions with A.K. in the early evening hours of November 11, 2002.

## VII.

### Conclusion

In summary, the County fell short of meeting its burden of proving by a preponderance of the evidence that the Ronald and Linda Strand maltreated, A.K., a foster child in their care on the evening of November 11, 2002. On the other hand, the ALJ has concluded that the Strands also failed to meet their burden of establishing by a preponderance of evidence that they were in full compliance with all with family foster care licensure rules in the course of their interactions with J.F. and A.W. on the evening of August 31, 2001, and in the course of their interactions with A.K. on the evening of November 11, 2002. However, the ALJ also concluded that they did not commit all of the licensure violations with which they were charged and, further, that the licensure violations they did commit arose in somewhat different factual settings than what the County presented to the Department.

The legislature has indicated that when imposing licensing sanctions, “the commissioner shall consider 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.”<sup>[127]</sup> The Department’s rules go further and require consideration of several specific factors:

- A. the laws or rules that have been violated;
- B. the nature and severity of each violation;
- C. whether the violation is recurring or nonrecurring;
- D. the effect of the violation on persons served by the program;
- E. an evaluation of the risk of harm to persons served by the program;
- F. any evaluations of the program by persons served or their families;
- G. relevant facts, conditions, and circumstances concerning the operation of the program; and
- H. any aggravating or mitigating factors related to the violation.<sup>[128]</sup>

As indicated in the Recommendation being made to the Commissioner, the ALJ has concluded that some licensure sanctions are warranted in this case. But consistency in application of sanctions is an important goal. And, here the Commissioner is in a much better position than the ALJ to determine how any discrepancies between the facts that were alleged and the facts that have actually been found should affect the nature of the sanction. So the ALJ recommends that the Commissioner reassess the sanction that

the Department previously ordered to determine whether it is still warranted in light of the findings and conclusions set forth in this report.

## B. H. J.

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<sup>[1]</sup> Minnesota Statutes, section 14.61 (2002). (Unless otherwise specified, citations to Minnesota Statutes refer to the 2002 edition.)

<sup>[2]</sup> Minnesota Statutes, section 14.61.

<sup>[3]</sup> See Minnesota Statutes, section 14.62, subdivision 2a.

<sup>[4]</sup> Testimony of Linda Strand.

<sup>[5]</sup> Testimony of Ronald Strand.

<sup>[6]</sup> Testimony of Ronald Strand.

<sup>[7]</sup> Testimony of Dan Bowman and Molly Kelly.

<sup>[8]</sup> Testimony of Dan Bowman.

<sup>[9]</sup> Testimony of Ronald Strand.

<sup>[10]</sup> *Id.*

<sup>[11]</sup> *Id.*

<sup>[12]</sup> Testimony of Ronald Strand.

<sup>[13]</sup> Testimony of A.W.

<sup>[14]</sup> Testimony of Ronald Strand.

<sup>[15]</sup> *Id.*; testimony of A.W.; Petitioners' Exhibit 2.

<sup>[16]</sup> Department's Exhibit 6.

<sup>[17]</sup> Testimony of Ronald Strand. See discussion in Part III-B of the Memorandum that follows.

<sup>[18]</sup> Testimony of A.W.

<sup>[19]</sup> Testimony of Ronald Strand and Linda Strand.

<sup>[20]</sup> Testimony of Ronald Strand and Linda Strand.

<sup>[21]</sup> *Id.*

<sup>[22]</sup> *Id.*; Licensees' Exhibit 2.

<sup>[23]</sup> Licensees' Exhibit 2.

<sup>[24]</sup> Testimony of Ronald Strand, Linda Strand, and Bonnie Stanton. See also discussion in Part III-A of the Memorandum that follows.

<sup>[25]</sup> Testimony of Ronald Strand.

<sup>[26]</sup> Testimony of Linda Strand.

<sup>[27]</sup> Department Exhibit 6.

<sup>[28]</sup> Petitioners' Exhibit 3.

<sup>[29]</sup> Testimony of Don Freid.

<sup>[30]</sup> *Id.*; Petitioners' Exhibit 3

<sup>[31]</sup> In both hearing exhibits and witness testimony, A.K. is frequently referred to as "A.J.," which represents a nickname made up of his first and middle initials.

<sup>[32]</sup> Testimony of Carl Rosendale.

[33] *Id.*; testimony of Ronald and Linda Strand; Petitioners' Exhibits 16, 17, 21, and 22.

[34] Testimony of Carl Rosendale.

[35] *Id.*; testimony of Ronald Strand; Petitioner's Exhibit 19.

[36] A.K.'s home of residence was in a county other than Blue Earth County.

[37] Testimony of Ronald Strand; Petitioners' Exhibit 19.

[38] Petitioners' Exhibit 4

[39] County Exhibit D; Petitioners' Exhibit 4.

[40] County Exhibit D.

[41] County Exhibit D; Petitioners' Exhibit 4; testimony of Ronald Strand.

[42] Department's Exhibit 2.

[43] County Exhibit D; Petitioners' Exhibit 4 and 5; testimony of Ronald Strand.

[44] Exhibit 28; testimony of Ronald Strand.

[45] Testimony of Ronald Strand.

[46] County Exhibit D; testimony of Ronald Strand.

[47] County Exhibit D; Petitioners' Exhibit 4.

[48] Petitioners' Exhibit 4.

[49] Minn. Stat. § 626.556.

[50] Department's Exhibit 8 and County Exhibit C.

[51] County Exhibit D.

[52] County Exhibit F.

[53] County Exhibit E.

[54] County Exhibit G.

[55] Petitioners' Exhibit 10.

[56] Department Exhibit 10.

[57] *Id.*

[58] Petitioners' Exhibit 14; testimony of Ronald Strand. See discussion in Part IV-D of the Memorandum that follows.

[59] Department Exhibit 9. At that time, Ms. Ramaker was recommending conditional licensure.

[60] Petitioners' Exhibit 23.

[61] Testimony of Molly Kelly.

[62] Testimony of Molly Kelly.

[63] Department Exhibit 11.

[64] Testimony of Molly Kelly.

[65] Department Exhibit 1. No effort appears to have been made to substantiate any of those allegations, and none of them were cited as bases for the Department's negative action against the Strand's license. Although no motion was made at the hearing to strike Department Exhibit 1 and any associated testimony from the record, the ALJ considered them completely irrelevant and immaterial to the issues in these proceedings and gave no consideration to them.

[66] Department Exhibit 13.

[67] Minn. Stat. §§ 14.50, 14.57, 14.69, 245A.01 through 245A.16, and 256.045. See further discussion in Part I. of the Memorandum that follows.

[68] Minn. Stat. § 256.045, subd. 3b, and Minn. R. 1400.7300, subp. 5. (2003).

[69] Minn. Stat. § 245A.08, subd. 2a (2003).

[70] Minn. R. pt. 9545.0180 (2001).

[71] Minn. R. pt. 0190, subp. 3D and 4 (2001).

[72] Minn. R. pt. 9545.0090 (2001).

[73] Minn. R. pt. 9545.0160 (2001).

[74] Minn. Stat. § 14.62, subd. 1.

[75] Minn. Stat. § 245A.07, subd. 3(a).

[76] Minnesota Statutes, Ch. 14.

[77] Minn. Stat. § 626.556.

[78] Minn. Stat. § 256.045, subd. 3(a)(8).

[79] Certain provisions of Minn. R. pt. 9545, including Minn. R. pt. 9545.0180, were repealed on September 2, 2003, and replaced by provisions of newly adopted Minn. R. pt. 2960. The repeal occurred after the incidents forming the basis for the Order of Revocation occurred before then, as did issuance of the order. So the rules cited by the Department govern this proceeding.

[80] Testimony of Linda Strand.

[81] Testimony of Bonnie Stanton

[82] The only evidence of professional medical intervention in J.F.'s care was evidence that the Wound Care Center prescribed a medication for the Strands to apply to the wound until it healed. (Testimony of Linda Strand) To say that an injury meets the definition of "serious" whenever a professional medical provider prescribes a medication for foster parents to administer to a foster child appears to stretch interpretation of the rule beyond its intended meaning. Additionally, it also stretches a point to say that the treatment that Strands provided to J.F. amounted to professional medical care because of their prior work histories. What they did for J.F. did not appear to go beyond what any foster parent with first aid training would have done for a foster child under similar circumstances.

[83] Testimony of Ronald Strand.

[84] *Id.*

[85] *Id.*

[86] Department's Exhibit 6.

[87] Department Exhibit 2.

[88] Department Exhibit 5. This appears to be a verbatim recitation of the information that the reporter obtained from A.K. and recorded in Exhibit 2.

[89] Department Exhibit 8. It appears that on December 4, 2002, nearly a month after the incident, A.K. related yet a third version of the events of November 11, 2002, to a Blue Earth County deputy Sheriff. That version is inconsistent with both previous versions in some significant respects. See Petitioners' Exhibit 7.

[90] County Exhibit D.

[91] County Exhibit E.

[92] County Exhibit F.

[93] Testimony of Carl Rosendale.

[94] *Id.*; Petitioners' Exhibits 16, 17, 21 and 22.

[95] Department Exhibit 8.

[96] Department Exhibits 2, 5, and 8.

[97] Department Exhibit 8.

[98] *Id.*

[99] Department Exhibits 2 and 5.

[100] Department Exhibit 8.

[101] Compare Department Exhibit 2 with Department Exhibit 8.

[102] Department Exhibits 2 and 8.

[103] A.K. tended to minimize the severity of the cut when he first reported the incident (Department Exhibit 2) but indicated that "it was pretty deep because it was gushing blood" when he was interviewed by Mr. Freid and Detective Billiar ten days later (Department Exhibit 8).

[104] Department Exhibit 2.

[105] Department Exhibit 8.

[106] Petitioners' Exhibit 4

[107] County Exhibit D; Petitioners' Exhibit 4.

[108] County Exhibit D.

[109] County Exhibit D; Petitioners' Exhibit 4; testimony of Ronald Strand.

[110] County Exhibit D; Petitioners' Exhibit 4 and 5; testimony of Ronald Strand.

[111] County Exhibit D; testimony of Ronald Strand.

[112] County Exhibit D; Petitioners' Exhibit 4.

[113] Petitioners' Exhibit 27. Counsel for the Petitioners expressed his intention to do so at a pre-hearing conference on February 12, 2004, and neither the County nor the Department adduced evidence that Petitioners' Exhibit 27 were not the pants in question, nor did counsel for those parties try to establish that that was the case through cross-examination.

[114] Exhibit 28.

[115] Testimony of Don Freid.

[116] Petitioners' Exhibit 4.

[117] Department's Exhibit 2.

[118] Department's Exhibit 10.

[119] Exhibit 13.

[120] Testimony of Ronald Strand.

[121] Petitioners' Exhibit 14.

[122] Minn. Stat. § 626.556, subd 10e(a).

[123] County Exhibit G.

[124] Subparagraph (5) does not describe another kind of act or omission that constitutes maltreatment. Rather it brings licensees, such as the Strands, under the act.

[125] County Exhibit C.

[126] Petitioners' Exhibit 19.

[127] Minn. Stat. § 245A.07, subd. 1.

[128] Minnesota Rules, part 9543.1060, subpart 2. Correction of violations would seem to fall within items G. and H.