

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary
Immediate Suspension of the
License of Lori Brede to Provide
Family Child Care

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

This matter was heard by Administrative Law Judge Steve M. Mihalchick on September 30, 2004, at Douglas County Social Services, Conference Room 1073, 809 Elm Street, Alexandria, Minnesota. The record closed upon adjournment of the hearing that day.

Daniel Lee, Assistant Douglas County Attorney, 305 Eighth Avenue West, Alexandria, MN 56308, appeared for the Minnesota Department of Human Services (Department) and Douglas County Social Services (DCSS).

Michael J. Dolan, Attorney at Law, P.O. Box 819, Alexandria, MN 56308, appeared for Lori Brede (Licensee).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon 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.

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

STATEMENT OF ISSUE

Should the temporary immediate suspension of Lori Brede's family child care license remain in effect because there is reasonable cause to believe that there is an imminent risk of harm to the health, safety or rights of children in her care?

Based upon the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Licensee is a resident of Douglas County, licensed as a Family Day Care Provider for approximately 11 years. She provides day care at her residence on the edge of Alexandria, in a somewhat rural area. Licensee's family includes her husband Jeff, and children from the marriage and prior marriages.

2. Licensee has a Minn. R. 9502.0367 C. 3. license, which authorizes her to care for up to 12 children alone, or 14 with another adult or helper. She usually provides care for about five preschoolers during school hours each week day, and four or five more when the older children come after school. In the summer, she cares for 12 to 14 children at a time and has a helper.^[1]

3. Licensee has a good record in providing day care. She has had only one correction order, which was for not having an up-to-date well-water test at the time of a relicensing visit. She corrected that promptly.^[2]

4. Licensee's husband is rarely around during day care hours. He is an over-the-road truck driver. He owns his own truck and is usually gone four or five days at a time each week on runs to Atlanta, Ohio, or Pennsylvania. When he is home, he helps his father farm some land they rent or works on maintaining their farm equipment.^[3]

5. On or about January 13, 2004, Sgt. Dave Ahlquist of the Douglas County Sheriff's Office interviewed two step-sisters who alleged that Licensee's husband had sexually abused them. They were 13 and 14 (almost 15) years old at the time of the interviews. They had both previously been children in Licensee's day care. Along with their parents, they had become friends of Licensee's family. The girls often slept overnight at Licensee's home and both sometimes babysat for Licensee's children.^[4]

6. In her statement to Ahlquist,^[5] the 13 year old girl, who was then in 8th grade, described the abuse as beginning when she was in 6th or 7th grade. It occurred five or more times on nights she slept over before or after babysitting. Licensee's husband would come to the bed where she was sleeping and touched her with his hands on her breasts under her clothes and on her vagina and would insert his finger

into her vagina. She asked him to stop, but he would not. He told her not to tell anyone because he could get in a lot of trouble. The last time he abused her was probably during the summer of 2003, but by then she had stopped babysitting for Licensee, at least when Licensee's husband was not on the road, because of the abuse. The girl did not tell her mother because her mother has a medical condition the girl did not want to make worse. Ultimately, she did tell friends and her step-sister. But they did not talk much because her older sister began crying saying it had happened to her earlier and she somehow felt responsible for what happened to the 13 year old.

7. In her statement to Ahlquist and as described in Ahlquist's report,^[6] the 14 year old girl had great difficulty discussing the abuse by Licensee's husband. She described it as starting when she was about 13 and occurring when she was at Licensee's home babysitting. Licensee's husband touched her bare breasts under her shirt. He did so on seven or more occasions. He also put his hand on her stomach, but she told him to stop and he walked away.

8. Ahlquist interviewed Licensee's husband on January 21, 2004. As reported in Ahlquist's report, he admitted to horseplay with the girls, but vaguely denied any intentional sexual contact.^[7]

9. Ahlquist interviewed the girls' mother on February 12, 2004. She reported that she had been on the phone with Licensee a few days earlier and discussed the allegations. That was the first time Licensee learned any of the detail of the allegations against her husband. Then Licensee's husband got on the phone and asked what was going to happen with the cops and if this were going to cost him any money. The girls' mother reportedly told him that she could not believe that he would do that and he reportedly responded, "I don't know what to say." She thought it unusual that he did not deny the allegation.^[8]

10. On February 18, 2004, and March 3, 2004, DCSS received reports that the Sheriff's office was investigating allegations that Licensee's husband sexually fondled the two girls. After some conversations between DCSS and the Sheriff's office, Ahlquist told DCSS that he was still working on the investigation and would provide his report to DCSS when he completed it. On March 17, 2004, he provided copies of the interviews of the two girls to Barbara Kleinschmidt, the DCSS child care licenser.^[9]

11. Ahlquist interviewed Licensee on March 18, 2004. He prepared or updated his report on or after that date. In it, he stated that the report would be forwarded to the County Attorney's Office for review, along with an Offender Tracking Form charging Licensee's husband with criminal sexual conduct.^[10] After additional requests by Kleinschmidt and some period of time, Ahlquist provided his report to DCSS. To date, charges have not been filed against Licensee's husband.

12. Kleinschmidt conducted a relicensing inspection of Licensee's home on July 29, 2004. She issued Licensee a correction order for having excessive things in the home that constituted a fire hazard. Licensee told Kleinschmidt that there were allegations that her husband had inappropriately touched two girls that stayed in their

home a great deal, but that “it did not happen during day care hours.” Kleinschmidt did not tell Licensee that she was aware of the investigation, but did tell her that it could affect her license.^[11]

13. On August 4, 2004, Kleinschmidt had discussions with the Douglas County Attorney’s Office as to whether there was “ a preponderance of the evidence” and whether the evidence she had demonstrated that the children in Licensee’s day care were at imminent risk of harm. She also spoke with staff at the Department. She determined that an imminent risk of harm to the children did exist.^[12]

14. On August 9, 2004, Kleinschmidt wrote the Department recommending the Temporary Immediate Suspension of Licensee’s license.^[13]

15. On August 10, 2004, the Department issued an Order of Temporary Immediate Suspension to Licensee that was based upon the information from the Sheriff’s Department. The Order was served upon Licensee by Kleinschmidt. The Order informed Licensee of her appeal rights.

16. Licensee filed a timely appeal. On August 17, 2004, the Department issued a form Notice of and Order for Hearing. DCSS completed the Notice and Order and served it upon Licensee on September 9, 2004.

17. One of Licensee’s day care mothers signed an affidavit stating that she had never received any reports from her child of inappropriate activities at Licensee’s day care and believed that Licensee provided excellent day care. Seven others signed affidavits stating the same and adding that they would immediately re-enroll their children if the suspension was lifted.^[14] A close friend of Licensee for 23 years wrote that Licensee’s husband is a caring family man who “could never do such a thing.”^[15]

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Minnesota Department of Human Services have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50, 245A.07, and 245A.08.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. Pursuant to Minn. Stat. § 245A.07, subd. 2, “[i]f the license holder’s actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program, the commissioner shall act immediately to temporarily suspend the license.” The companion rule, Minn. R. 9502.0341, subp. 9, requires the Commissioner to immediately suspend a license if the Commissioner finds that the health, safety, or rights of the children in care are in imminent danger.

4. At a hearing regarding a licensing sanction under Minn. Stat. § 245A.07, the 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.

5. Under Minn. Stat. § 245A.07, subd. 2, the scope of this hearing is limited solely to “whether the temporary immediate suspension should remain in effect pending the commissioner’s final order under section 245A.08,” and the Department must demonstrate that reasonable cause exists to believe that the license holder’s actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.

6. The Department demonstrated reasonable cause for the temporary immediate suspension. The statements of the two girls to Ahlquist, along with the statements of Licensee’s husband to Ahlquist and the girls’ mother as reported in Ahlquist’s report, demonstrate reasonable cause to believe that Licensee’s husband committed acts in Licensee’s home that constitute Criminal Sexual Conduct in the First Degree with at least one girl who was then eleven or twelve years old and that his continued residence in the home poses an imminent risk of harm to the health and safety of the day care children served by Licensee.

7. The attached Memorandum is incorporated by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the temporary immediate suspension of the license of Lori Brede to provide family child care license be **AFFIRMED**.

Dated this 15th day of October, 2004

S/ Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Tape recorded (3 tapes). No transcript prepared.

MEMORANDUM

The Department has the burden of showing that there is reasonable cause to believe that the health, safety, or rights of the children in care are in imminent danger. Requiring only a showing of “reasonable cause” is intended to ensure that vulnerable children are protected until there can be a full hearing and a final determination.

The statements of the two girls to the Sheriff’s investigator appear to be fairly credible. They provide reasonable cause to believe that Licensee’s husband engaged

in conduct that constitutes Criminal Sexual Conduct in the First and Second Degree under Minn. Stat. §§ 609.342 and 609.343. These are crimes that constitute a permanent disqualification for anyone in the household of a day care licensee.^[16] The fact that the conduct was so serious requires a conclusion that such past conduct by a household member poses an immediate risk of harm to the health, safety and rights of the day care children served in the household.

Kleinschmidt assessed the risk of harm under the factors listed in Minn. Stat. § 245C.16, subd. 1, which deals with individuals determined to have a disqualification. While a disqualification determination has not yet been made in this case, and the statute refers to “immediate” risk of harm rather the “imminent” risk of harm, the statute provides appropriate standards for evaluating imminent risk of harm. The statute requires consideration of all relevant information available, including the following factors:

- (1) the recency of the disqualifying characteristic;
- (2) the recency of discharge from probation for the crimes;
- (3) the number of disqualifying characteristics;
- (4) the intrusiveness or violence of the disqualifying characteristic;
- (5) the vulnerability of the victim involved in the disqualifying characteristic;
- (6) the similarity of the victim to the persons served by the program where the individual studied will have direct contact; and
- (7) whether the individual has a disqualification from a previous background study that has not been set aside.

In this case, the conduct was very recent, it occurred within the previous year. There has been no discharge from probation because the criminal investigation is still pending. There were a dozen or more events of Licensee’s husband fondling the girls over the last two years or so. Criminal Sexual Conduct is extremely intrusive. The victims were very vulnerable. They were barely teenage girls in a situation where Licensee’s husband was in a position of head of the household and a close friend. The girls in Licensee’s day care range up to age 11 and some continue in day care beyond that. They are virtually identical age-wise to the two victims. A person who would fondle a 12 year old girl would have no compunction about fondling a 9, 10, or 11 year old girl. Moreover, the physical situation of day care children being in Licensee’s home is very similar to the victims being in the home. The risk of harm is great and imminent.

S.M.M.

- [1] Testimony of Licensee.
- [2] Testimony of Licensee.
- [3] Testimony of Licensee.
- [4] Testimony of Licensee; Exs. 1A, 1B., and 1C. (The Administrative Law Judge has lettered the individual documents in Ex. 1, the County's multi-document exhibit.)
- [5] Ex. 1B.
- [6] Exs. 1A and 1C.
- [7] Ex. 1A.
- [8] Ex. 1A; testimony of Licensee.
- [9] Exs. 1D, 1E, and 1F.
- [10] Ex. 1A.
- [11] Testimony of Barbara Kleinschmidt.
- [12] Exs. 1J and 1K.
- [13] Ex. 1L.
- [14] Ex. 2.
- [15] Ex. 3.
- [16] Minn. Stat. § 245C.15, subd.1.