

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Revocation of the
Family Child Care License of
Nancy Stenquist

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

This matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on September 20, 2005, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN. The hearing record closed at the conclusion of the hearing that day.

Rebecca S. Morrisette, Assistant Hennepin County Attorney, 525 Portland Avenue South, 12th Floor, Minneapolis, MN 55415, appeared for the Minnesota Department of Human Services (Department) and the Hennepin County Human Services and Public Health Department (County).

Nancy Stenquist (Licensee), 824 Elm Creek Circle, Champlin, MN 55316, appeared on her own behalf.

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. 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 ISSUES

Whether the revocation of Licensee's Family Child Care license should be affirmed? The Administrative Law Judge concludes it should.

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

FINDINGS OF FACT

1. Licensee is a resident of Hennepin County, licensed as a Family Child Care Provider since 1987. She provides childcare at her residence in Champlin, which is a split-level home. Licensee conducts her daycare on both floors of the home.

2. Licensee cares for ten to twelve children at any given time, four of whom are her grandchildren.¹ She provided daycare for her 11-year-old grandson M.S. during the summer months while school was not in session.²

3. In late-July or early-August 2004, an incident occurred between M.S. and another daycare child, three-year-old A.L., in the downstairs bathroom in which M.S. asked A.L. to touch and kiss his penis.³ When this occurred, Licensee was engaged in activities with some of the other children upstairs.

4. Sometime during the summer of 2004, Licensee became aware that a child in her daycare was engaging in "butt touching" of some of the other children.⁴ Licensee had a discussion with all the daycare children about the difference between good touch and bad touch. Licensee did not report the touching to her daycare parents, including the parents of the child doing the touching, or to the County.⁵

5. On August 17, 2004, M.S. ran away from Licensee's residence during daycare hours. M.S. was found the same day, but since that time he has not returned to Licensee's care.⁶

¹ Ex. 4, pp. 6, 7.

² Ex. 4, p. 5. M.S. had some behavior problems and trouble following directions. M.S. is also known as M.E.

³ Ex. 3.

⁴ Testimony of Licensee.

⁵ Testimony of Licensee.

⁶ Ex. 8. Testimony of Licensee.

6. During a relicensing visit on or about November 11, 2004, the County renewed Licensee's family child care license for a period of two years, effective January 1, 2005.⁷

7. In late-November or early-December 2004, A.L. spontaneously reported to her parents that she had touched and kissed M.S.'s penis.⁸ The following day, the parents informed Licensee about A.L.'s statements, at which time Licensee explained that the incident had probably occurred sometime during the summer months and likely involved "butt touching." Licensee informed the parents that she had spoken with the kids about the difference between good and bad touch shortly after learning of the touching.⁹

8. Shortly after A.L.'s disclosure, her parents reported the incident to the Champlin Police Department. Hennepin County Child Protection was notified and Valerie Forsch was assigned to the case. Ms. Forsch and Detective Kevin Wagman immediately began interviewing the parties involved, including two neighbor girls who used to attend Licensee's daycare.¹⁰

9. CornerHouse staff interviewed A.L. on December 8, 2004, using diagrams, drawings, and anatomical dolls.¹¹ Based upon her words and demonstrations, CornerHouse staff found that sexual abuse appeared to have occurred.

10. On January 4, 2005, Ms. Forsch and Detective Wagman interviewed M.S. at his school.¹² M.S. admitted that he asked A.L. to touch his penis and that she did.

11. At the time of her interview on January 11, 2005, Ms. Forsch and Detective Wagman informed Licensee of the allegations against her in regard to neglect due to lack of supervision of the children, specifically M.S. and A.L.¹³ Licensee did not deny that the incident between M.S. and A.L. occurred, and she admitted to not always being able to see or hear what is going on downstairs when she is upstairs.¹⁴

12. Later that same day, Ms. Forsch made a finding of maltreatment by neglect due to lack of supervision and notified Licensee's licensing worker Gail Wescott.¹⁵ Ms. Forsch determined that no child protection services were needed. By letter dated January 11, 2005, Ms. Forsch informed

⁷ Ex. 14.

⁸ Ex. 3, 4, 7.

⁹ Ex. 3, 4, 7.

¹⁰ Ex. 4.

¹¹ Ex. 6.

¹² Ex. 4, p. 5.

¹³ Ex. 4, pp. 7-8.

¹⁴ Ex. 4, p. 9.

¹⁵ Ex. 4, p. 9.

Licensee of the results of the investigation, citing Minn. Stat. § 626.556, subd. 10, and Licensee's right to request reconsideration of the determination.¹⁶

13. On January 11, 2005, Ms. Wescott documented the results of the Child Protection investigation in a Complaint Form.¹⁷ She cited violations regarding supervision under Minn. R. 9502.0315, subd. 29a, and failure to report alleged abuse under Minn. R. 9502.0375, subp. 1.

14. Ms. Wescott completed a Risk of Harm Determination on January 14, 2005.¹⁸ She found that Licensee posed a high risk of harm to her daycare children based upon the recency of the disqualifying event, the number of disqualifying characteristics, and the vulnerability of the victim.

15. By letter dated January 19, 2005, Tim Hennessey at the County recommended to the Department that Licensee's family child care license be placed on temporary immediate suspension based upon the finding of maltreatment by neglect.¹⁹ The County notified Licensee of its recommendation by letter that same day.²⁰

16. On January 24, 2005, the Department informed the County that it did not agree with the County's assessment that the risk of harm to Licensee's daycare children was imminent, and the Department declined to order a temporary immediate suspension of the license.²¹ The County notified Licensee of the Department's determination by letter on that day, but clearly stated that the Department had the authority to take another form of negative action against her license.²² In another letter to Licensee dated January 24, 2005, the County informed Licensee that it had completed its investigation into the incident and substantiated the Child Protection maltreatment determination.²³

17. By letter dated February 9, 2005, Ms. Forsch informed Licensee that because of the maltreatment determination and because the maltreatment was serious as defined by Minn. Stat. § 245C.02, subd. 18, Licensee was disqualified from providing licensed child care.²⁴ The letter explained Licensee's right to request reconsideration of one or both of the maltreatment determination and the disqualification, as well as her right to request a fair hearing.

¹⁶ Ex. 5.

¹⁷ Ex. 7.

¹⁸ Ex. 15.

¹⁹ Ex. 2.

²⁰ Ex. 16.

²¹ Ex. 19.

²² Ex. 17.

²³ Ex. 18.

²⁴ Ex. 9. This letter corrected a previous letter sent to Licensee by Child Protection that had addressed only the maltreatment finding and not the disqualification.

18. On February 25, 2005, Licensee contacted Tim Hennessey about the letter dated February 9, 2005.²⁵ She expressed confusion about how she should respond to the letter. Mr. Hennessey explained that Licensee had a right to appeal both the maltreatment finding and the disqualification, and suggested that Licensee consult an attorney if she had additional questions.

19. Licensee did not request reconsideration of or appeal the maltreatment determination or the disqualification within 30 days as required by the Department.²⁶

20. By letter to the Department dated April 4, 2005, the County recommended that Licensee's family child care license be revoked based upon the maltreatment determination and the resulting disqualification.²⁷ The County notified Licensee of its recommendation for a negative licensing action by letter that same day.²⁸

21. On April 26, 2005, the Department issued Licensee an Order of Revocation based upon the County's recommendation, citing the disqualification under Minn. Stat. § 245C.14, subd. 1, and Minn. R. parts 9502.0325 and 9502.0335.²⁹ The letter informed Licensee of her right to appeal the licensing sanction, which she did.³⁰ In her appeal letter dated May 3, 2005, Licensee expressed frustration about her inability to obtain accurate information about the appeals process and her miscommunication with Mr. Hennessey at the County. Licensee disagreed with the County's assessment about lack of supervision.³¹

22. The Department issued a Notice of and Order for Hearing on July 12, 2005, setting the hearing to take place on August 24, 2005. The hearing was subsequently rescheduled for September 20, 2005.

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 and 245A.08.

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

²⁵ Ex. 20.

²⁶ Ex. 12.

²⁷ Ex. 1.

²⁸ Ex. 21.

²⁹ Ex. 10.

³⁰ Ex. 11.

³¹ Ex. 11.

3. Maltreatment under Minn. Stat. § 626.556, includes neglect, which is defined, in relevant part, as the “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.”³² “Serious” maltreatment includes neglect when it results in criminal sexual conduct against a child.³³

4. The daycare rules state that children in care must be supervised at all times, meaning a child care provider must be within sight or hearing of an infant, toddler, or preschooler at all times so that the provider can intervene to protect the health and safety of a child.³⁴ Licensee failed to supervise a child in care, which resulted in sexual abuse of the child, and, thus, violated the rules.

5. Minn. Stat. § 626.556 and Minn. R. 9502.0375 both require caregivers to report any suspected physical abuse, sexual abuse, or neglect of a child. The failure to report is a violation of the rule. The Department and the County raised this as an issue during the investigation but did not ultimately include the allegation in the Order for Revocation. Licensee should have reported the “butt touching” incidents immediately after learning of them.

6. Minn. Stat. § 245C.14, subd. 1 provides:

The commissioner shall disqualify an individual who is the subject of a background study from any position allowing direct contact with persons receiving services from the license holder . . . upon receipt of information showing, or when a background study completed under this chapter shows any of the following: . . .

(3) an investigation results in an administrative determination listed under section 245C.15, subdivision 4, paragraph (b).

7. Minn. Stat. § 245C.15, subd. 4(b)(2), requires a seven-year disqualification for a licensee who has committed “substantiated serious or recurring maltreatment of a minor under section 626.556”

8. Licensee has committed serious maltreatment and, therefore, she must be disqualified.

9. A maltreatment determination is conclusive if the Licensee does not request reconsideration of or a fair hearing on the maltreatment determination in a timely manner.³⁵ Thus, the maltreatment determination is not at issue here.

³² Minn. Stat. §§ 626.556, subd. 10e(a)(2), and 626.556, subd. 2(c)(2).

³³ Minn. Stat. § 245C.02, subd. 18(d).

³⁴ Minn. R. parts 9502.0315, subp. 29a, and 9502.0365, subp. 5.

³⁵ Minn. Stat. § 245C.29, subd. 1(2) and 1(3).

10. A disqualification is conclusive if the Licensee does not request reconsideration within 30 calendar days of the individual's receipt of the notice of disqualification.³⁶ Thus, the disqualification is not at issue here.

11. A family childcare license shall be revoked, not renewed, or suspended if the provider, or any other person residing in the daycare residence, has a disqualification under Minn. Stat. § 245C.14.³⁷

12. Under certain circumstances, the Commissioner may set aside a license disqualification if the Commissioner finds that the individual does not pose a risk of harm to any person served by the provider.³⁸ The Commissioner makes that determination by considering factors such as the nature, severity, and consequences of the event; whether there was more than one disqualifying event; the age and vulnerability of the victim; and the harm suffered by the victim.

13. The Department must demonstrate reasonable cause existed to sanction the license. If the Department makes that showing, the burden of proof shifts to the licensee to demonstrate by a preponderance of the evidence that she was in compliance with the rules at the time the violation allegedly occurred.³⁹

14. Under Minn. Stat. § 245A.07, subd. 1, when applying 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 the persons served by the provider.

15. Licensee did not keep M.S. and A.L. within sight or hearing and, as a result, sexual abuse took place against A.L. This conduct constitutes inadequate care and supervision and is a gross violation of Minn. Stat. § 626.556, subd. 10e and Minn. R. 9502.0315. As early as the summer of 2004, Licensee was aware that inappropriate touching may have been occurring at her daycare and she did not report it. A.L. likely experienced mental and emotional harm, even though there was no expert opinion to that effect in the record. Revocation of the license is appropriate. License has not shown that she does not pose a risk of harm to the children she serves.

16. Licensee claims that she was so confused by the letters that she received from the County and the Department that she was not aware of her need to appeal the disqualification if she disagreed with it or the procedures for filing an appeal. But the letters clearly stated her right to appeal each determination and the deadlines for filing appeals.

³⁶ Minn. Stat. § 245C.29, subd. 2(b).

³⁷ Minn. R. 9502.0335, subp. 6.D.

³⁸ Minn. Stat. § 245C.22, subd. 4.

³⁹ Minn. Stat. § 245A.08, subd. 3(a).

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

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner affirm the revocation of Licensee's Family Child Care license.

Dated: October 20, 2005

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Tape recorded (2 tapes). No transcript prepared.