

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 Julie
Priebe To Provide Family Day Care
under Minn. R. pts. 9502.0300 to
9502.0445

**FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on December 13, 2006, at the Olmsted County Government Center, 151 Fourth Street SE, Rochester, Minnesota 55904. The OAH record closed at the end of the hearing on December 13, 2006.

Geoffrey A. Hjerleid, Senior Assistant Olmsted County Attorney, 151 Fourth Street SE, Rochester, Minnesota 55904-3710, appeared on behalf of the Department of Human Services. The licensee, Julie Priebe, appeared on her own behalf, without counsel.

STATEMENT OF THE ISSUE

The issue is whether the Department of Human Services' order of revocation of Julie Priebe's family day care license should be affirmed because a disqualified individual was residing in her day care home.

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

FINDINGS OF FACT

1. Julie Priebe ("Ms. Priebe") has been licensed to provide family child care services for 21 years, in recent years with a Class C2 license at her home at 5008 Henry Court SE, Rochester, Minnesota, Olmsted County, Minnesota 55904 ("the home").¹ Ms. Priebe provides day care services on a weekday basis, typically

¹ Testimony of Julie Priebe, Ex. 1.

from 6:30 a.m. to 4:30 p.m., for seven families, both full and part-time, for children ranging from 11 months to 9 years old.²

2. Ms. Priebe has been a licensed day care provider for 21 years.³ She has had no licensing violations and no correction orders, with the exception of those at issue in this proceeding.⁴

3. Parents of children, including two special needs children,⁵ in Ms. Priebe's care testified and made written submissions that their children have received excellent, safe, loving care, resulting in healthy development while being cared for by her.⁶

4. An adult son, Michael Priebe, moved into the daycare home in August 2004. On November 16, 2004, Ms. Priebe was issued a correction order for failure to notify the County of a change in household membership and have a background check on the new occupant. The background check was completed on November 18, 2004. She signed the correction order on November 22, 2004.⁷

5. In November 2005, the son Michael Priebe moved out of the home and an adult female renter, Lisa (last name unknown) moved into the home.⁸

6. During this time period, Ms. Priebe was going through or had just gone through a divorce, had certain medical problems that might require surgery. Lisa and Ms. Priebe's mother were available to provide or assist in providing care to the children. Lisa was current in CPR and first aid training, and Olmsted County licenser Ms. Angela Jensen explained that the mother would also need to be current in CPR and first aid training as well.⁹

7. In January 2006, another adult son, Patrick Priebe, moved into the home.¹⁰ Patrick Priebe had no contact with or access to the daycare children during their presence at the daycare home.¹¹

² *Id.*

³ Testimony of Julie Priebe.

⁴ Testimony of Angela Jensen, Olmsted County Social Worker and licenser.

⁵ Ms. V., a special education teacher in Rochester, testified that her son had a language disorder and had been in Ms. Priebe's care since he was four months old. At the suggestion of the school district, he was pulled from Ms. Priebe's daycare at age two and placed in a center-based program so he would be with his "peer group." After the change, the boy had nothing but problems and developed severe behavioral issues in the center based program. After about a year in the program he was required to leave because of the behavioral problems. Within a week of the return to Ms. Priebe's care the behavioral problems departed. Ms. V. also testified that she hopes and plans for her newborn to be able to be cared for by Ms. Priebe beginning this January 2007.

⁶ Exs. 4, 9, 11-14, testimony of Greg S. and Michelle V.

⁷ Ex. 5.

⁸ *Id.*

⁹ *Id.* at Attachment 6.

¹⁰ Ex. 5 at pg. 1 and attachment 5.

8. Lisa is also Patrick Priebe's girlfriend.¹²

9. Ms. Priebe first notified the County of the household changes in noted in Finding Nos. 4 and 5 above by submitting background check forms for Lisa and Patrick Priebe on March 9, 2006, in preparation for an upcoming March 21, 2006, relicensing visit by Ms. Jensen.¹³

10. The background checks on Patrick Priebe and Lisa were completed. Patrick Priebe's background check disclosed that he had been convicted of felonies: on October 3, 2005, for violating and order for protection and forgery; and on February 16, 2001, for receiving stolen property.¹⁴ He is therefore disqualified from having direct contact with children in a licensed daycare. The County drafted letters dated March 17, 2006, to Ms. Priebe and Patrick Priebe notifying them of Patrick Priebe's disqualification from direct contact with or access to daycare children. Both letters were hand delivered to Ms. Priebe by Ms. Jensen during the relicensing visit on March 21, 2006.¹⁵

11. Also on March 21, 2006, Ms. Jensen issued a correction order to Ms. Priebe regarding the failure to notify the county of the change in residents and having a disqualified person living in the home. The county gave her until March 31, 2006, to correct the deficiencies. It also advised Ms. Priebe that Patrick Priebe could stay at Ms. Priebe's home on weekends.¹⁶ Ms. Jensen and Ms. Priebe discussed and understood that Patrick Priebe would live at Ms. Priebe's sister's residence.¹⁷

12. On March 24, 2006, Ms. Priebe signed the Correction Order, notifying the County that Lisa had signed other documents and agreeing that Patrick Priebe would only be at the home on weekends.¹⁸

13. On March 22, 2006, Patrick Priebe requested reconsideration of the disqualification decision.¹⁹

14. Ms. Priebe helped move her son and his belongings to her sister's residence at 912 Fourth Avenue SE, Rochester, Minnesota the weekend after the March 21, 2006, relicensing visit.²⁰ Patrick Priebe did not inform his parole officer, Jeremy Ernste, of his change of residence.²¹

¹¹ Exs. 4, 9, 11, 12, and 14.

¹² Testimony of Julie Priebe.

¹³ *Id.*

¹⁴ Ex. 7.

¹⁵ *Id.* at pg.1, and its Attachments 4 & 5, and Exs. 2 & 3.

¹⁶ Ex. 5 at pg. 1, and its Attachment 2, testimony of Julie Priebe.

¹⁷ Ex. 5 at Attachment 5. testimony of Angela Jensen.

¹⁸ *Id.*

¹⁹ Ex. 4.

²⁰ Testimony of Julie Priebe.

²¹ Ex. 5 at attachment 7.

15. Patrick Priebe resided with Ms. Priebe's sister, Jennifer Mewhorter, from about March 25, 2006, through May 31, 2006.²² He lived in a downstairs bedroom, where he could come and go as he pleased through a kitchen door, with the understanding that the "house not lose its typical routine."²³

16. Beginning the end of March 2006, Ms. Priebe had an opportunity to help a friend and earn additional needed money that caused her to be absent from her home three or four nights a week, returning at 6:00 a.m. on the mornings after workweek night absences to be ready for her daycare day that started at 6:30 a.m.²⁴

17. Unknown to Ms. Priebe, Patrick Priebe would come to her home on some nights during her absences to spend the night with his girlfriend Lisa, arriving after Ms. Priebe had left, and departing before her return.²⁵

18. On Monday, April 24, 2006, at 8:20 p.m. Patrick Priebe's parole officer, Jeremy Ernste, visited with Patrick Priebe at Ms. Priebe's home.²⁶

19. On May 1, 2006, at 12:37 p.m., Ms. Jensen talked to Ms. Priebe regarding her receipt of the signed correction orders, other matters and confirmed with Ms. Priebe that Patrick Priebe was not living in the home and received Ms. Priebe's sister's address, where Patrick was living.²⁷

20. On May 1, 2006, at 12:40 p.m., Ms. Jensen talked to Patrick Priebe's parole officer, Jeremy Ernste, about the April 24, 2006, visit and noted that: "JE says he is living at Julie's."²⁸

21. During another May 1, 2006, telephone conference with Ms. Jensen, Ms. Priebe first learned that her son had occasionally been staying overnight during her absences from the home. She confronted Patrick Priebe and Lisa with the information from Ms. Jensen. Lisa "rolled her eyes" and admitted that Patrick Priebe was staying overnight one or two nights during the week during Ms. Priebe's absences. Patrick also admitted what had been going on and that he would also be at Ms. Priebe's house from 7:30 p.m. to 10:30 p.m. sometimes during Ms. Priebe's absences so as to not disrupt the Mewhorter household routine. Ms. Priebe told Patrick that he could no longer even stay on weekends or visit as he had been and told Lisa that she would have to move out of the home no later than June 1, 2006, which she did.²⁹

²² Testimony of Jennifer Mewhorter.

²³ *Id.*

²⁴ Testimony of Julie Priebe, Ex. 9.

²⁵ *Id.* Ex. 5.

²⁶ Ex. 5 at attachment 7.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Ex. 9, testimony of Julie Priebe.

22. Ms. Jensen did not communicate again with Ms. Priebe until her May 16, 2006, letter advising her of the recommendation of license revocation.³⁰

23. After Lisa's departure from the home, Ms. Priebe changed the locks at the home at the beginning of June 2006, so none of the previous unknown visits by her son could happen again.³¹

Procedural Findings

24. On May 11, 2006, Olmsted County recommended that the Department issue an order of revocation, pursuant to Minn. Stat. § 245A.07, revoking Ms. Priebe's license to provide day care.³²

25. On May 16, 2006, Olmsted County notified Ms. Priebe by letter of its revocation recommendation to the Department, stating that:

"This recommendation was made because we have information that Mr. Patrick Priebe continues to reside in your home."³³

26. On September 28, 2006, the Department issued to Patrick Priebe its decision not to set aside or grant a variance to his disqualification.³⁴

27. Patrick Priebe did not appeal the adverse reconsideration decision.

28. On September 28, 2006, the Department issued to Ms. Priebe its Order of Revocation.³⁵

29. On October 6, 2006, Ms. Priebe filed a timely appeal from the order of Revocation and requested an appeal hearing pursuant to Minn. Stat. § 245A.07.³⁶

30. On October 13, 2006, Jerry Kerber, Director, Division of Licensing, Minnesota Department of Human Services, executed a Notice of and Order for Hearing scheduling a contested case hearing on December 13, 2006.

31. On November 13, 2006, the Administrative Law Judge issued a Protective Order, which was served upon the parties by mail on November 14, 2006.

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

³⁰ Testimony of Angela Jensen.

³¹ Testimony of Julie Priebe.

³² Ex. 5, at pg. 1.

³³ Ex. 6.

³⁴ Ex. 7.

³⁵ Ex. 8.

³⁶ Ex. 9.

CONCLUSIONS

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 substantive and procedural requirements of law or rule have been fulfilled.

3. Minn. Stat. § 245A.07, subd. 3, allows the Commissioner to suspend or revoke a license, or impose a fine if a license holder fails to comply with the applicable laws or rules. Notice of any such action must be given by certified mail and must state the reasons for the sanction.

4. Under Minn. Stat. § 245A.08, subd. 3, the burden of proof first lies with the Commissioner, who may demonstrate reasonable cause for the 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 shifts to the license holder to demonstrate by a preponderance of the evidence that she was in full compliance with those laws or rules allegedly violated, at the time that the Commissioner alleges the violations occurred.

5. Under Minn. Stat. § 245A.07, if a license holder fails to comply with a correction order or conditional license, the Commissioner is authorized to impose a fine and order other licensing sanctions.

6. Minn. Stat. § 245C.03, subd. 1(2) requires that background studies be conducted regarding “an individual age 13 and over living in the household where the licensed program will be provided.”

7. Minn. R. 9502.0375 requires all daycare providers to inform the licensing agency within 30 days of any change in the regular membership of the household.

8. Minn. Stat. § 245A.07, subd. 1, requires the Commissioner to 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 those persons in a licensee’s program before applying sanctions under Minn. Stat. § 245A.07.

9. The Commissioner has advanced evidence establishing reasonable cause to believe that Ms. Priebe failed to notify the local agency of two additional household members within 30 days of their moving into the household violation of Minn. R. 9502.0375, subd. 2.

10. Ms. Priebe has failed to demonstrate by a preponderance of the evidence that she was in full compliance with Minn. R. 9502.0375, subd. 2., requiring notification of the local agency of two additional household members, Lisa and Patrick Priebe, within 30 days of their moving into the household, as alleged by the Department.

11. The Commissioner has advanced evidence establishing reasonable cause to believe that Ms. Priebe allowed a disqualified individual to remain a resident in the household, even after agreeing to a corrective order that he must be removed, resulting in a violation of Minn. Stat. §§ 245A.07 and 245C.14 .

12. Ms. Priebe has proved by a preponderance of the evidence that she was in compliance with Minn. Stat. §§ 245A.07 and 245C.14, did comply with the March 21, 2006, corrective order by immediately removing Patrick Priebe from residence in the daycare home, that Patrick Priebe was not a resident in the daycare home after March 31, 2006, as required by the correction order.

13. Ms. Priebe has proved by a preponderance of the evidence that she was in compliance with Minn. Stat. §§ 245A.07 and 245C.14, did comply with the March 21, 2006, corrective order by taking the additional steps of: terminating all of Patrick Priebe's visiting privileges; terminating Lisa's tenancy; and changing the locks of the home, promptly after she learned her son had been visiting overnight during some of her weeknight absences.

14. The eight children and parents of four families being served would be harmed by the revocation of Ms. Priebe's license.³⁷

32. These Conclusions are reached for the reasons set forth in the Memorandum below, which is hereby incorporated by reference into these Conclusions.

33. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

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

³⁷ Exs. 4, 9, 11-14, testimony of Greg S. and Michelle V.

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends to the Commissioner of Human Services that:

The revocation of the family day care license of Ms. Julie Priebe be withdrawn and rescinded.

Dated: January 12, 2007

s/M. Kevin Snell

M. Kevin Snell

Administrative Law Judge

Reported: Tape recorded (two (2) tapes); no transcript prepared.

NOTICES

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner.³⁸ Parties should contact the office of Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651)431-2907 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 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.

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

³⁸ Minn. Stat. § 14.61.

MEMORANDUM

The Commissioner presented the testimony of the County licensing worker, her notes, and the Correction Orders and letters issued to Licensee to show that Ms. Priebe did not comply with the rules and laws applicable to her family child care. The testimony and documentary evidence submitted by the County and State at the hearing: 1) showed that Ms. Priebe recently reported two additional household members late; and 2) indicated that Ms. Priebe failed to ensure that her adult son was no longer residing in the home and misled the County licensing worker regarding his actual residence status. Accordingly, the Commissioner established that reasonable cause existed to revoke the license.

Ms. Priebe could certainly be expected to know she had to report the two new household members, Patrick Priebe and Lisa, within 30 days of their arrival because she had learned of this requirement no later than November of 2004 when she received and signed the correction order on the same issue regarding Michael Priebe. Reporting Lisa's presence approximately 3 months late and Patrick Priebe's arrival almost two months late would justify a modest sanction. The 2004 correction order, while proof of knowledge of the 30 day rule requirement, should not, of itself, be a basis for applying a sanction at this time. Considering the nature, minor chronicity, lack of severity of these two violations of rule and the lack of effect these two violations of rule had on the health, safety, or rights of the children in Ms. Priebe's program, neither revocation nor suspension of Ms. Priebe's license would be reasonable.³⁹ Fines of \$100.00 for each of the two violations of Minn. R. 9502.0375 would be justified, if the Commissioner believes that such a sanction is necessary.⁴⁰

Ms. Priebe proved by a preponderance of the evidence: (1) that she had been unaware that Patrick had been staying overnight in her home until the County licenser told her that; and (2) when she was given that information, she took immediate and effective steps to remedy the situation. It was Patrick Priebe and his girlfriend who had misled Ms. Priebe regarding his surreptitious visits to the daycare home during Ms. Priebe's absences during non-daycare hours. It was Patrick Priebe who had misled his probation officer as to his actual residence. The County licensing worker relied on Mr. Ernste's opinion, based on a single visit with Patrick Priebe, that Patrick Priebe remained resided in the home. The Administrative Law Judge finds

³⁹ Minn. Stat. § 245A.07, subd. 1.

⁴⁰ Minn. Stat. 245A.07, subd. 3(c)(4) provides:

Fines shall be assessed as follows: the license holder shall forfeit \$1,000 for each determination of maltreatment of a child under section 6.6.556 or the maltreatment of a vulnerable adult under section 626.557; the license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child or adult ratios, and failure to submit a background study; and the license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those subject to a \$1,000 or \$200 fine above. For purposes of this section, "occurrence" means each violation identified in the commissioner's fine order.

little credibility to this opinion and can apply virtually no weight to this double hearsay opinion. What the Administrative Law Judge does give great weight to is best evidence: credible testimony of witnesses appearing at the hearing, testifying under oath, and under cross-examination.

Another fact given material weight was Ms. Priebe's decision to terminate the occupancy of Lisa. This was a decision adverse to both her financial interest due to the loss of rent and her work interests by no longer having Lisa to help in the daycare home. Ms. Priebe chose the most conservative approach by removing temptation for her son to return to the home. Ms. Priebe chose compliance over her financial interests.

The testimony of Michelle V., a special education teacher in Rochester, was credible regarding the care given to her special needs child by Ms. Priebe, and her sincere desire to continue using Ms. Priebe's services for her newborn. In addition, the testimony of Greg S., his written submission, and the written submissions of the other parents appeared sincere to the Administrative Law Judge.

For all of these reasons, the Administrative Law Judge recommends that the Order of Revocation be rescinded.

M.K.S.