

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Family Child Care  
License of Tanya Peters and the Order of  
Conditional Licensure and Order to Forfeit  
a Fine

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

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy at 9:30 a.m. on January 25, 2007, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota. The hearing record closed at the conclusion of the hearing.

Rebecca S. Morrisette, Assistant County Attorney, Health Services Building, 525 Portland Avenue, Suite 1210, Minneapolis, MN 55415, appeared on behalf of the Hennepin County Human Services and Public Health Department (the County) and the Minnesota Department of Human Services (the Department).

Tanya Peters, 1023 Vincent Avenue North, Minneapolis, MN 55411 (Licensee), appeared for herself without counsel.

**STATEMENT OF ISSUES**

1. Did the Commissioner properly order the Licensee to forfeit a fine for (1) failing to initiate a background study before an individual working in the home had direct contact with children served by the program; and (2) failing to document that her helpers had training on Sudden Infant Death Syndrome (SIDS) and shaken baby syndrome before they assisted in the care of an infant?

2. Did the Commissioner have sufficient grounds to place the Licensee's license on conditional status based on her failure to comply with day care rules?

The Administrative Law Judge concludes the Department's decision to fine the Respondent for failing to initiate a background study should be rescinded, but the decisions to fine her for failing to ensure her adult helper had SIDS/shaken baby syndrome training and to place her license on conditional status should be affirmed.

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

## FINDINGS OF FACT

1. Tanya Peters became licensed to provide child care in July 2000. At the time, she worked full-time for the Minneapolis Public Schools (MPS). She became a licensed child care provider in anticipation that her employment with MPS would be reduced or eliminated in the near future. Peters initially provided child care on a part-time or short-term basis during the evenings, on school release days, and in the summers.<sup>[1]</sup>

2. In February 2004, a county licensing worker conducted a relicensing visit at Peters' home. Peters and her adult daughter, LaTavia Trass, were home at the time. The licensing worker issued a correction order for a number of violations, including no evidence of SIDS training; no fire and storm drill log available; the fire extinguisher needed servicing; failure to use bleach solution; the storage of hazardous items in the yard and in the home within reach of children (cleaning supplies); the presence of hazardous items in the kitchen within reach of children (sharp items, plastic bags); the water temperature was too high; and some of the paperwork concerning vaccination of pets was missing or incomplete.<sup>[2]</sup> The licensing worker indicated that she would recommend that Peters be relicensed upon correction of these violations.<sup>[3]</sup>

3. In April 2004, Peters returned the correction order, indicating that all the violations had been corrected by April 27, 2004.<sup>[4]</sup>

4. In June 2004, the licensing worker returned to Peters' home for a follow-up visit regarding the correction order. She found that a number of items had not been corrected, and she issued two correction orders: one for returning the previous correction order without correcting all the safety concerns,<sup>[5]</sup> and another for other violations found, including water temperature set too high; the storm drill log was not available; the smoke detector battery was low; some wiring was exposed in the basement, which Peters used for purposes of the storm drill; there were hazardous items within reach of children in the yard (tools, grills and charcoal, garbage, and potting soil with fertilizer) and the kitchen (cooking utensils); and toxic substances within reach of children in the bathroom (hair products).<sup>[6]</sup> Peters corrected most of the violations during the visit and was relicensed effective June 1, 2004.<sup>[7]</sup>

5. In June 2004, Peters lost her job with MPS. In January 2005, Peters began operating her child care full-time.<sup>[8]</sup>

6. On March 1, 2005, the licensing worker conducted another licensing visit at Peters' home. At that time, Peters had let her license lapse because she did not have the funds to reapply for licensure when the application was due. Although most licensing requirements were in order, there were a few items out of compliance. The licensing worker issued a correction order for toxic or hazardous items within reach of children (batteries, tools, kitchen utensils, and cleaning products); the smoke detector battery was low; the fire and storm drill log was not current; she needed a variance to use a mesh crib or playpen for sleeping infants; and there were tools and piled up lawn furniture within reach of children in the yard.<sup>[9]</sup> Peters corrected most of the violations

during the visit and certified that all were corrected by March 7, 2005.<sup>[10]</sup> The licensing worker recommended that Peters be relicensed effective March 1, 2005.<sup>[11]</sup>

7. During this visit on March 1, 2005, the licensing worker noticed that Peters was remodeling the basement so that she could use it for child care. The licensing worker reminded Peters that the fire marshal would have to visit and approve the basement before it was used for child care.<sup>[12]</sup>

8. On February 2, 2006, a county licensing worker conducted an unannounced relicensing visit. Peters was not there; LaTavia Trass was watching the children in care. The licensing worker asked to see the basement. Although the fire inspection had not been completed, Peters was using the basement for child care, as well as two bedrooms on the first floor not previously licensed. The licensing worker told LaTavia that these areas could not be used for child care until the fire inspection was completed. When Peters called to reschedule an appointment for the licensing visit, the licensing worker again advised Peters that these areas could not be used until the fire inspection was completed.<sup>[13]</sup>

9. The licensing worker returned to the home for a scheduled visit on February 8, 2006. At this time, Peters was using both the basement and the two bedrooms for child care. The licensing worker wrote a correction order for a number of violations, including missing paperwork (grievance policy, admission and arrangements forms, dental information, provider policy forms, immunization forms, medication authorization forms, travel and activities forms, crib safety checklists, vaccination information for a pet, the storm and drill log, and the alcohol and drug use policy). In addition, Peters was lacking documentation to show that she had completed passenger restraint training, and there was no physician statement for LaTavia. There was no documentation to confirm that SIDS training and shaken baby syndrome training had been completed for LaTavia and three substitute caregivers (Regina Labostrie, Tiffany Alston, and Vanessa Rivers), nor was there documentation showing that LaTavia had completed CPR and first aid training. A number of other violations were noted, including water temperature was set too high; hazardous materials were within the reach of children in the yard (wooden pallets and metal wheelbarrow); the kitchen and second floor had toxic and hazardous materials accessible to children in care; four unlicensed areas were being used for care; and there was no background check for Vanessa Rivers.<sup>[14]</sup>

10. Peters returned the correction order, on which she crossed out the names of Regina Labostrie, Tiffany Alston, and Vanessa Rivers. Her written revisions to the form suggest that only LaTavia Trass would be signed up for SIDS training and shaken baby syndrome training. She further indicated that on February 28, 2006, she had sent in the background check for Vanessa Rivers.<sup>[15]</sup>

11. On March 21, 2006, the County recommended that the Commissioner place Peters' license on conditional status based on her history of failing to follow licensing rules.<sup>[16]</sup>

12. On March 28, 2006, the licensing worker conducted a follow-up visit and found much improvement in the paperwork and the house. At that time, Peters had a new person named Tasha Henderson assisting her with care, and she submitted a background study form for Henderson. Peters indicated that LaTavia had recently started a new job, and Peters was uncertain whether she would continue to provide care in the future. Peters told the licensing worker that “Regina and Tiffany and Vanessa are not working in the childcare,” but said Vanessa might work there in the future. The licensing worker reminded Peters that Vanessa would need the training and background study completed before she started working there.<sup>[17]</sup>

13. Although the licensing worker believed Peters had made a good effort to improve the operation of the child care, he issued a correction order that day for the remaining minor deficiencies in paperwork and the training necessary for LaTavia Trass. Peters returned the correction order on May 3, 2006, stating that LaTavia was not working for her any longer and consequently would not be taking the training.<sup>[18]</sup>

14. On July 19, 2006, the County received a complaint from a parent whose child was in Peters’ care, alleging that Peters’ 13-year-old daughter, A.Y., was providing unsupervised child care during evening hours. Peters acknowledged that her daughter did babysitting during evening hours and was not aware that, because her license permitted 24-hour care, an adult had to be present to provide supervision. A correction order for failure to provide adequate supervision was issued for this violation.<sup>[19]</sup> Peters subsequently changed her license to limit the hours during which she would provide care to between 6:00 a.m. and 10:00 p.m.<sup>[20]</sup>

15. On September 26, 2006, the Commissioner issued an Order to Forfeit a Fine and Order of Conditional License. The Commissioner assessed a fine of \$200 for the failure to submit a background study for Vanessa Rivers and \$200 for the failure to ensure that caregivers who assist in the care of infants had been trained on SIDS and shaken baby syndrome. The Order of Conditional License was based on the correction orders issued February 24, 2004; June 21, 2004; March 1, 2005; February 9, 2006; March 28, 2006; and the substantiated complaint of July 19, 2006, concerning failure to provide adequate supervision. During the term of conditional licensure Peters is required to comply with rules concerning child care, take additional training, submit attendance records to the County on a monthly basis, and provide a copy of the order to all parents of children in care.<sup>[21]</sup>

16. On October 12, 2006, Peters filed a timely appeal of the Commissioner’s Order.<sup>[22]</sup>

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

## **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Human Services are authorized to consider an appeal of the fine assessed for violating the child care

licensing rules, pursuant to Minn. Stat. §§ 245A.06, subd. 4, 245A.07, subd. 3(c)(1), and 14.50.

2. The Respondents received due, proper and timely notice of the basis for the agency's decision, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. At a hearing regarding a licensing sanction, 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. 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.<sup>[23]</sup>

4. License holders must submit completed background study forms to the commissioner before individuals specified in Minn. Stat. § 245C.03, subd. 1, begin positions allowing direct contact in any licensed program.<sup>[24]</sup>

5. The Commissioner demonstrated that reasonable cause existed to fine the Licensee for violation of § 245C.03, subd. 1, but the Licensee demonstrated during the hearing that she was in compliance because she submitted a background study form for Vanessa Rivers before allowing her to begin a position allowing direct contact in a licensed program.

6. Minn. Stat. § 245A.144 requires that license holders document that before staff persons, caregivers, and helpers assist in the care of infants, they receive training on reducing the risk of SIDS and shaken baby syndrome.

7. The Commissioner has demonstrated that the Respondent did not document the required training for LaTavia Trass and Regina Labostrie before they assisted in the care of infants, in violation of Minn. Stat. § 245A.144.

8. The Commissioner may suspend or revoke a license, or impose a fine, if a license holder fails to comply fully with applicable laws or rules.<sup>[25]</sup> The license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including failure to submit a background study.<sup>[26]</sup> An "occurrence" means each violation identified in the commissioner's fine order.<sup>[27]</sup>

9. The Department's assessment of a fine of \$200 for failing to submit a background study should be rescinded; the \$200 fine for failing to document SIDS and shaken baby syndrome training comports with Minn. Stat. § 245A.07, subd. 3(c)(4), and should be affirmed.

10. If the Commissioner finds that an applicant or license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the Commissioner may

issue a correction order and an order of conditional license to the applicant or license holder. When issuing a conditional license, 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>[28]</sup>

11. The Commissioner evaluated the appropriate statutory factors in determining that Respondent's license be made conditional for a period of one year.

Based upon the foregoing Conclusions, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the decision of the Commissioner of Human Services to fine the Respondent \$200 for failing to document training on SIDS and shaken baby syndrome and to place her license on conditional status BE AFFIRMED; the fine of \$200 for failing to submit a background study should be rescinded.

Dated: February 20, 2007

s/Kathleen D. Sheehy  
KATHLEEN D. SHEEHY  
Administrative Law Judge

Tape recorded (2 tapes)

### **MEMORANDUM**

The Commissioner assessed the first fine of \$200 on the basis that Peters failed to submit a background study for Vanessa Rivers before she provided care to daycare children. Peters testified that two people helped her care for children prior to February 2006: her adult daughter LaTavia Trass, and Regina Labostrie, who worked for her between March and July 2005. Peters contends that Vanessa Rivers never provided care for daycare children but that, in response to the licensing worker's request for her back-up plan in case of an emergency, Peters identified Vanessa Rivers, along with Regina Labostrie and Tiffany Alston, as potential substitute caregivers. The licensing worker's dictation of February 10, 2006, assumes that LaTavia Trass was an adult caregiver and the other three were substitute caregivers, all of whom had provided care in the past, and this assumption is further reflected in the correction order of February 9, 2006.<sup>[29]</sup>

In a March 28, 2006, follow-up visit to discuss the correction order, however, the licensing worker's dictation reflects that Ms. Peters told him that Regina, Tiffany, and Vanessa were not working in the childcare, but that Vanessa might work there in the future.<sup>[30]</sup> The licensing worker (who did not testify at the hearing) apparently accepted Ms. Peters' representation as to Vanessa's status, because his notes indicate that he

advised her that if Vanessa did work there in the future, she would need to have the training and background study completed before she starts. Furthermore, the correction order issued on this date refers only to completion of training for LaTavia, not for the others. By the time of this follow-up visit, however, the County had already forwarded its recommendation for conditional licensure to the Commissioner.<sup>[31]</sup>

Although the County argues that Peters' testimony is contradicted by the fact that she forwarded the background study form for Vanessa Rivers as required by the correction order, the Administrative Law Judge does not believe this is a sound basis for rejecting either Ms. Peters' testimony or the corroboration concerning Vanessa Rivers' status contained in the March 28, 2006, dictation and correction order. First, background studies are required for both actual and potential caregivers; submission of the form for a potential caregiver is not an admission that the person has already provided care.<sup>[32]</sup> Second, the record reflects that Peters was at this time overwhelmed by the detailed record-keeping requirements of licensure rules; she knew she had significant compliance issues, and she was not inclined to argue with her licensing worker. She was directed to submit the form, and she did it. Based on the testimony of Ms. Peters and the corroborating evidence of March 28, 2006, the Administrative Law Judge has concluded that Peters did not violate § 245C.04, subd. 1(d). The fine of \$200 for this alleged violation should be rescinded.

In addition, Peters was fined for failing to document the completion of SIDS and shaken baby syndrome training for "Regina, Tiffany, Vanessa, and LaTavia."<sup>[33]</sup> Peters argues again that Tiffany and Vanessa did not provide care, but were only potential substitute caregivers. Nonetheless, the record is clear that Peters failed to ensure that LaTavia Trass and Regina Labostrie, both of whom undisputedly provided care, received the training.<sup>[34]</sup> The Commissioner properly imposed a fine for violation of Minn. Stat. § 245A.144.

Finally, Peters argues that the order of conditional licensure is unnecessary because the correction orders in February and June 2004 were issued when she was only doing part-time daycare, and in March 2005 she had not yet gotten up to speed with the licensing rules. By February 2006, however, Peters had been operating a full-time daycare for more than one year. At that point, she had a chronic and worsening history of failing to comply with licensing rules, even when the rules were explained to her repeatedly (for example, the need for a fire inspection before using previously unlicensed areas). In issuing the order of conditional licensure, the Commissioner properly considered the nature and severity of rule violations as well as past failures to comply with licensing rules. The period of conditional licensure will give Peters the chance to demonstrate her understanding of the need to comply with these rules, even if she personally believes they are not necessary to ensure the safety of daycare children, if she wishes to continue as a licensed child care provider.

K.D.S.

## 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 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 Minn. Stat. § 14.62, subd. 1, the agency 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.

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<sup>[1]</sup> Testimony of Tanya Peters; Ex. 2.

<sup>[2]</sup> Exs. 2 & 3.

<sup>[3]</sup> Ex. 2.

<sup>[4]</sup> Exs. 3 & 5.

<sup>[5]</sup> Ex. 4.

<sup>[6]</sup> Exs. 5 & 6.

<sup>[7]</sup> Ex. 5.

<sup>[8]</sup> Test. of T. Peters.

<sup>[9]</sup> Exs. 7 & 8.

<sup>[10]</sup> Ex. 8.

<sup>[11]</sup> Ex. 7.

<sup>[12]</sup> Ex. 7.

<sup>[13]</sup> Ex. 9.

<sup>[14]</sup> Exs. 9 & 10; Test. of T. Peters.

<sup>[15]</sup> Ex. 10.

<sup>[16]</sup> Ex. 1.

[17] Ex. 17 at page 1.

[18] Ex. 17.

[19] Ex. 16.

[20] Test. of T. Peters.

[21] Ex. 11.

[22] Ex. 12.

[23] Minn. Stat. § 245A.08, subd. 3(a) (2006).

[24] *Id.*, § 245C.04, subd. 1(d).

[25] Minn. Stat. § 245A.07, subd. 3(a) (2006).

[26] *Id.*, § 245A.07, subd. 3(c)(4).

[27] *Id.*

[28] *Id.*, § 245A.06, subd. 1.

[29] Ex. 9 at page 1.

[30] Ex. 17 at page 1.

[31] It is not evident from the record that the Commissioner received the dictation of March 28, 2006, although the Commissioner did receive the correction order of that date.

[32] See Minn. Stat. § 245C.03, subd. 1(3) (2006) (background studies required of current or prospective employees or contractors who will have direct contact with children in care).

[33] Ex. 10 at pages 1-2.

[34] Peters also argues that the training was not necessary for anyone because in February 2006 she had no infants in care; however, her enrollment form, dated December 30, 2005, reflects that she had an 11-month-old in care at that time. In addition, when Regina Labostrie worked for her in the summer of 2005, there were three infants in care.