

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 Arlene Yaeger	<b>FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION</b>
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The above matter came on for hearing before Administrative Law Judge Scott Newman on December 5, 2008, at the Administration Center, 705 Courthouse Square, St. Cloud, MN 56303. The OAH record was closed at the end of the hearing on December 5, 2008.

Gayle Borchert, Assistant Stearns County Attorney appeared on behalf of the Department of Human Services. Arlene Yaeger (Licensee) appeared without counsel.

**STATEMENT OF THE ISSUE**

Whether the Commissioner of Human Services should revoke the Family Child Care License of Arlene Yaeger?

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

**FINDINGS OF FACT**

1. At all times material herein, Arlene Yaeger was licensed to provide family child care services.<sup>1</sup>
2. At all times material herein, Susan Welle was employed by Stearns County Human Services as a licensor and as such, responsible for monitoring the legal compliance of family daycare licensees.<sup>2</sup>
3. The Appellant, as a licensed daycare provider, conducts her daycare business at her private home and at all times relevant was the only adult present at the daycare facility.<sup>3</sup>

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<sup>1</sup> Testimony Susan Welle and Ex. 1.  
<sup>2</sup> Test. of S. Welle.  
<sup>3</sup> Test. of S. Welle and Arlene Yaeger.

4. The Licensee's family child care license was due to expire on January 8, 2008.<sup>4</sup>

5. Because the Licensee's license was scheduled to expire in January 2008, Susan Welle made a scheduled relicensing visit with the Licensee at her daycare facility on December 14, 2007. The purpose of the relicensing visit was to review the daycare facility records and address any potential safety issues with the Licensee prior to being relicensed.<sup>5</sup>

6. At the December 14, 2007 relicensing visit, Susan Welle noted the following violations:

a. Admission and arrangement forms were not completed for two children in the Licensee's care.

b. Immunization records for one child in the Licensee's care were not up to date.

c. Licensee's training for SIDS/Shaking Baby Syndrome Training was not up to date.

d. Licensee's CPR training was not up to date.

e. Licensee's ongoing training requirements were not up to date.

f. Safety Inspection Sheet for individual crib devices located at the Licensee's facility was not up to date.

g. Toddlers or preschoolers were not provided with approved sleeping equipment at the Licensee's facility.

h. An approved smoke detector was not installed in the main floor hallway of the Licensee's facility.

i. Electrical outlets within reach of children were not shielded or tamper proof.

j. Licensee used a bleach/water solution for disinfecting the diapering surface that was not approved.<sup>6</sup>

7. On December 14, 2007, a Correction Order was issued outlining the violations itemized at Paragraph 6. The Correction Order instructed the Licensee that evidence of correction of the violations cited in the Correction Order must be submitted

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<sup>4</sup> Test. S. Welle and Ex. 1.

<sup>5</sup> Test. S. Welle.

<sup>6</sup> Test. S. Welle and Ex. 2.

to Susan Welle by December 31, 2007.<sup>7</sup> The Correction Order further instructs the Licensee to sign and date the Correction Order and return it to the Licensor thereby certifying that the corrections have been made.<sup>8</sup>

8. On January 9, 2008, the Licensee submitted to Stearns County Human Services an unsigned copy of the Correction Order indicating a portion of the violations had been corrected.<sup>9</sup>

9. On January 28, 2008, Susan Welle made an unannounced visit to the Licensee's daycare facility for the purpose of determining compliance with the December 14, 2007 Correction Order<sup>10</sup>

10. As a result of the unscheduled visit of January 28, 2008, Susan Welle issued a Correction Order dated January 29, 2008, outlining the following ratio/capacity limits violations:

a. The Licensee had a total of 13 children in daycare in violation of the license 12 children maximum limit.

b. The Licensee had three children in daycare under the age of two in violation of the license maximum of two children under the age of two.<sup>11</sup>

11. On February 5, 2008, Stearns County Human Services recommended to the Commissioner that the Licensee's daycare license be made conditional and a fine imposed on the basis of violations noted in the December 14, 2007 Correction Order.<sup>12</sup>

12. The January 29, 2008 Correction Order indicated a deadline of February 4, 2008, in which the Licensee was to submit evidence of correction.<sup>13</sup>

13. Licensee did not submit evidence of correction of the January 29, 2008 Correction Order.<sup>14</sup>

14. Genni Hadley is a food program representative who has dealt with the Licensee for a number of years.<sup>15</sup>

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<sup>7</sup> Test. S. Welle and Ex. 2.

<sup>8</sup> Ex. 2.

<sup>9</sup> Test. S. Welle and Ex. 46.

<sup>10</sup> Test. S. Welle and Ex. 2.

<sup>11</sup> Test. S. Welle and Ex. 39.

<sup>12</sup> Test. Paul Weinmann, Ex.'s 2 and 45.

<sup>13</sup> Ex. 39.

<sup>14</sup> Test. S. Welle.

<sup>15</sup> Test. S. Welle and A. Yaeger.

15. On February 6, 2008 Genni Hadley made an unannounced visit to the Licensee's daycare facility for the purpose of monitoring reimbursement for the food program.<sup>16</sup>

16. Immediately following the February 6, 2008 unannounced visit, Genni Hadley reported to Stearns County Human Services that the Licensee had a minimum of 14 children at her daycare facility with at least four being in the infant/toddler age group.<sup>17</sup>

17. On or about February 8, 2008, Stearns County Department of Human Services notified the Licensee of its recommendation to the Commissioner of the Minnesota Department of Human Services that the Licensee's license be revoked because of additional and continued violations by the Licensee.<sup>18</sup>

18. Stearns County Department of Human Services changed its recommendation to the Commissioner from a recommendation for a conditional license and fine to a revocation of the Licensee's license because the Licensee failed to correct the December 14, 2007 violations in a timely manner (Ex. 46); had additional violations which the Licensee failed to correct in a timely manner (Ex. 39); and continued to operate her daycare facility in an overcapacity/over ratio manner.<sup>19</sup>

19. The Licensee completed the necessary corrections of the December 14, 2007 Correction Order by April 1, 2008.<sup>20</sup>

20. On May 12, 2008 Susan Welle conducted an unannounced visit to the Licensee's daycare facility. On that date, it was determined the Licensee had a total of 13 children in her daycare facility of which one child was a toddler and two children were infants. At that time, Susan Welle issued a Correction Order to the Licensee which indicated that the Licensee was over limit by one child and over ratio by two toddler/infants.<sup>21</sup>

21. At the May 12, 2008 unannounced visit, Susan Welle requested that the Licensee contact a sufficient number of parents to come to the daycare facility for the purpose of picking up their children thereby bringing the daycare facility into compliance on the over ratio/capacity violation. At that time, the Licensee refused, stating that "she would do no such thing." Consequently, Susan Welle contacted some parents for the purpose of requesting that they come to the daycare facility and pick up their children. The purpose of this request by Susan Welle was to bring the Licensee into compliance with the ratio/capacity limits.<sup>22</sup>

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<sup>16</sup> Test. S. Welle and A. Yaeger.

<sup>17</sup> Test. S. Welle and Ex.'s 40 and 41.

<sup>18</sup> Test. S. Welle, P. Weinmann and Ex.'s 38 and 42.

<sup>19</sup> Test. S. Welle, P. Weinmann and Ex.'s 3, 46, 39, 41, 42 and 38.

<sup>20</sup> Test. S. Welle.

<sup>21</sup> Test. S. Welle and Ex. 43.

<sup>22</sup> Test. S. Welle and Ex. 43.

22. The Correction Order dated May 13, 2008 requires the Licensee to certify correction of the violations by May 19, 2008. At no time has the Licensee complied with this requirement.<sup>23</sup>

23. On or about May 13, 2008, Stearns County Department of Human Services notified the Minnesota Department of Human Services of the facts surrounding the May 12, 2008, unannounced visit to the Licensee's daycare facility, reiterating its recommendation that the Licensee's license be revoked because "Ms. Yaeger continues to disregard the licensing rules and is quite blatant in this disregard."<sup>24</sup>

24. The Department offered into evidence documents regarding numerous past Correction Orders, complaints and assessments regarding the Licensee, dating back to 1980, which were received without objection.<sup>25</sup>

25. On the basis of the information provided to the Minnesota Department of Human Services by Stearns County, the Department issued an Order revoking the Licensee's license.<sup>26</sup>

26. The Licensee timely requested a hearing on the revocation order.

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

### CONCLUSIONS

1. The Commissioner and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 245A.07, subs. 2 and 2a.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department has complied with all relevant substantive and procedural requirements of law and rule.

4. The Commissioner is authorized to revoke the license of a license holder who does not comply with applicable law or rule.<sup>27</sup>

5. 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 person served by the program in determining whether to revoke a license.<sup>28</sup>

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<sup>23</sup> Test. S. Welle and Ex. 43.

<sup>24</sup> Test. P. Weinmann and Ex. 43.

<sup>25</sup> Ex. 7-34.

<sup>26</sup> Ex. 44.

<sup>27</sup> Minn. Stat. § 245A.07, subd. 1.

<sup>28</sup> *Id.*

6. At a hearing regarding a licensing sanction, the Commissioner has the burden of proof to demonstrate that reasonable cause existed for the adverse action taken against the family child care license. When such a showing is made, the burden of proof shifts to the Licensee to demonstrate by a preponderance of the evidence that the Licensee is in full compliance with the laws and rules that the Commissioner alleges were violated.<sup>29</sup>

7. Evidence of past violations, complaints and assessments regarding the Licensee which dated back over 25 years were excluded from consideration of this matter on the basis that the probative value of such evidence was substantially outweighed by the danger of unfair prejudice, confusion of the issues, were misleading and so remote in time they were not relevant.<sup>30</sup>

8. That at all times material, the Licensee's licensed capacity, child/adult ratio, age distribution restrictions were as follows: a total of 12 children of which 10 could be under school age and of the total children under school age, no more than two shall be infants and toddlers. Of this total, no more than one shall be an infant.<sup>31</sup>

9. Minnesota Statutes require all licensed childcare providers to maintain documentation for every crib that is used in the daycare.<sup>32</sup>

10. Minnesota Statutes require all licensed child care providers to be trained in cardio pulmonary resuscitation (CPR), sudden infant death syndrome (SIDS) and shaken baby syndrome (SBS)<sup>33</sup>

11. Minnesota Rules require all licensed child care providers must have admissions and arrangement forms and immunization records for all children in care.<sup>34</sup>

12. Minnesota Rules require all daycare providers have properly installed smoke detectors on all levels of the daycare facility and that all electrical receptacles accessible to children be shielded when not in use.<sup>35</sup>

13. Minnesota Rules require all daycare providers must use an approved disinfectant in the diaper changing area.<sup>36</sup>

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<sup>29</sup> Minn. Stat. § 245A.08, subd. 3.

<sup>30</sup> Ex. 7-34; Minn. R. of Evid. 403.

<sup>31</sup> Minn. R. 9502.0367.

<sup>32</sup> Minn. Stat. § 245A.146.

<sup>33</sup> Minn. Stat. § 245A.50, subd. 4, 5 and 7.

<sup>34</sup> Minn. R. 9502.0405, subp. 3 and 4.

<sup>35</sup> Minn. R. 9502.0425, subp. 17 and 18.

<sup>36</sup> Minn. R. 9502.0435, subp. 13.

14. If the Commissioner determines that the licensed holder has not corrected violations as specified in a Correction Order, the Commissioner may revoke the license.<sup>37</sup>

15. The Licensee failed to correct the violations outlined in Exhibit 2 in a timely fashion.<sup>38</sup>

16. The Licensee was in violation of the child/adult ratio's; age distribution restrictions on January 28, 2008, and failed to correct the violations outlined in the Correction Order dated January 29, 2008<sup>39</sup>

17. The Licensee was in violation of the child/adult ratios; age distribution restrictions on February 6, 2008.<sup>40</sup>

18. Licensee was in violation of child/adult ratios, age distribution restrictions on May 12, 2008, and failed to correct the violations outlined in the Correction Order dated May 13, 2008.<sup>41</sup>

19. On January 28, February 6, and May 12, 2008, the Licensee gave false or misleading information during the investigation of her compliance with applicable laws or rules.<sup>42</sup>

20. The Licensee has chronically failed and refused to comply with the laws and rules which govern her license and that such violations severely affect the health, safety and rights of the persons served by her daycare facility.

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

22. 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:

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<sup>37</sup> Minn. Stat. § 245A.06, subd. 3 and Minn. Stat. § 245A.07.

<sup>38</sup> Test. S. Welle, P. Weinmann and Ex. 46.

<sup>39</sup> Test. S. Welle, P. Weinmann and Ex. 39.

<sup>40</sup> Test. S. Welle and Ex. 41.

<sup>41</sup> Test. S. Welle and P. Weinmann and Ex. 43.

<sup>42</sup> Minn. Stat. § 245A. 07, subd. 3; test. S. Welle, A. Yaeger and Ex. 43.

## RECOMMENDATION

The Administrative Law Judge recommends to the Commissioner of Human Services that:

The order of revocation of the family daycare license of Licensee be affirmed.

Dated: January 9, 2009

s/Scott J. Newman  
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SCOTT J. NEWMAN  
Administrative Law Judge

Reported: Digitally Recorded

## NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (Commissioner) will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. §§ 14.61 and 245A.07, subd. 2a(b), the parties adversely affected have ten (10) calendar days to submit exceptions to this Report and request to present argument to the Commissioner. The record shall close at the end of the ten-day period for submission of exceptions. The Commissioner then has ten (10) working days from the close of the record to issue his final decision. Parties should contact 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.

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.

## MEMORANDUM

The Licensee's license was due to expire in January 2008. In December 2007, the Department began the process of reviewing the records of this daycare provider for the purpose of reissuing a current license. In the review process, the Department found 10 violations and issued an appropriate Correction Order.<sup>43</sup> The Licensee admitted that she did not like paperwork,<sup>44</sup> and the Licensee was very reluctant to comply with the Correction Order<sup>45</sup> as evidenced by the fact that she was three and one-half months late

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<sup>43</sup> Ex. 2.

<sup>44</sup> Test. A. Yaeger.

<sup>45</sup> Ex. 2.

in completing the corrections required by the Correction Order (Ex. 2).<sup>46</sup> During this same three and one-half months time period, the evidence shows the Licensee was in violation of the ratio/capacity limits of her license on January 28 and February 6, 2008. Finally, in the following month she was again in violation of the ratio/capacity limits of her license on May 12, 2008.

Given the Licensees confrontational attitude,<sup>47</sup> her reluctance or refusal to comply with Correction Orders issued on December 14, 2007,<sup>48</sup> January 29, 2008<sup>49</sup> and May 13, 2008,<sup>50</sup> the undersigned believes that the Licensee has intentionally failed and refused to comply with the laws and rules which govern her daycare license. The Commissioner is charged with the responsibility of monitoring compliance of daycare providers because the State of Minnesota has determined that it has an interest in providing for the health, safety and rights of the children served by daycare providers. In this case, the Licensee was warned on December 27, 2007, that she is expected to comply with Minnesota Law when a recommendation was made to the Commissioner that her license be made conditional and that she pay a fine because of the violations as described in Exhibit 2.<sup>51</sup> Here the Licensee, with the greatest reluctance, complied with the Correction Order (Ex. 2) while at the same time flagrantly continuing to violate the ratio capacity formula with no apparent intention of complying with subsequent corrective orders.<sup>52</sup> Given these facts, it is appropriate for the Commissioner to revoke the subject license.

**S. J. N.**

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<sup>46</sup> Test. S. Welle.

<sup>47</sup> Test. S. Welle and Ex. 43

<sup>48</sup> Ex. 2,

<sup>49</sup> Ex. 39

<sup>50</sup> Ex. 43 and Test. S. Welle,

<sup>51</sup> Ex. 45

<sup>52</sup> Ex. 39 and 43.