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	OAH 7-1800-20606-2

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary Immediate Suspension of the License of Amy Aune and Joanne Lovegren to Provide Family Child Care	<b>FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION</b>
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This matter was heard by Administrative Law Judge Richard C. Luis on July 17, 2009, at the Wright County Human Services Agency, Conference Room 147, in Buffalo, Minnesota. The Office of Administrative Hearings (OAH) record closed at the end of the hearing on July 17, 2009.

Anne L. Mohaupt, Assistant Wright County Attorney, appeared on behalf of Wright County Human Services (the County) and the Minnesota Department of Human Services (the Department or DHS).

Amy Aune and Joanne Lovegren (the Licensees) appeared on their own behalf.

**STATEMENT OF ISSUE**

Whether reasonable cause exists to believe that the Licensees pose an imminent risk of harm to the health, safety or rights of children in their care based upon Ms. Aune's unexplained blackout and the resulting injuries to her shoulder on the night of March 17, 2009.

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

**FINDINGS OF FACT**

1. Amy Aune is the daughter of Joanne Lovegren, and the two women are co-licensed to provide family child care in Wright County. The day care is conducted out of Ms. Aune's home in Maple Lake, Minnesota, between the hours of 7:00 a.m. and 6:00 p.m.

2. Ms. Aune married Ben Aune in October 2007. Mr. Aune works the second shift as a nursing assistant at a local nursing home. The couple has two children, ages three and one.<sup>1</sup> The two children receive the services of the daycare.

3. Ms. Lovegren spends winters with her son in Las Vegas, Nevada. She is generally there from October until sometime in the spring, depending upon the temperatures in Minnesota.<sup>2</sup> In recent years, Ms. Lovegren has had limited involvement with the daycare, serving only as a substitute for her daughter when necessary.<sup>3</sup>

4. In February 2009, Ms. Aune was involved in a motor vehicle accident. She sustained injuries for which her health practitioner prescribed pain medication. One of those medications was a fentanyl patch.<sup>4</sup>

5. On the night of March 17, 2009, Ms. Aune was at home watching television. The next thing she remembers is waking up in bed at approximately 4:30 a.m. She has no recollection of what occurred during this time.<sup>5</sup>

6. Ms. Aune began her workday as usual on the morning of March 18, 2009. At approximately 10:00 a.m. she began to experience severe pain in her right shoulder. She asked her husband to stay home from work in case she needed his assistance with the daycare children. By the end of her workday, Ms. Aune's pain became debilitating, and her husband took her to the hospital in Buffalo.<sup>6</sup>

7. On March 19, 2009, the staff at the Buffalo hospital had difficulty diagnosing the pain that Ms. Aune was experiencing in her arm and had her transferred to North Memorial Medical Center (NMMC) in Robbinsdale for further testing. Ms. Aune was diagnosed as having a bump on her head as well as a fractured dislocated right shoulder. She has no recollection of how she sustained these injuries.<sup>7</sup>

8. During her intake into NMMC, Ms. Aune showed symptoms of depression, anxiety, and post-traumatic stress disorder (PTSD). As a result, the physician attending to her referred her to NMMC's psychiatric unit for observation.<sup>8</sup> Ms. Aune underwent psychological testing and occupational therapy from March 24 until March 26, 2009. The various hospital staff who worked with Ms. Aune found her to be "suspicious and superficial," "fidgety and inappropriately bright," and to have a rambling and overly-detailed pattern of speech. Ms. Aune described herself as "high strung."<sup>9</sup>

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<sup>1</sup> Testimony of Amy Aune.

<sup>2</sup> Testimony of Joanne Lovegren.

<sup>3</sup> Exs. 5 and 8.

<sup>4</sup> Testimony of Amy Aune; Ex. 4 (Brian O'Neill, M.D.).

<sup>5</sup> Testimony of Amy Aune.

<sup>6</sup> Testimony of Amy Aune and Ben Aune.

<sup>7</sup> Ex. 4; Testimony of Amy Aune.

<sup>8</sup> Ex. 4.

<sup>9</sup> Ex. 4 (Christina Masica, MA, LICSW, and Michele Darger, OTS).

9. When hospital staff suggested that her husband may have inflicted her injuries, Ms. Aune denied that possibility.<sup>10</sup>

10. Upon learning of her daughter's hospitalization, Joanne Lovegren immediately traveled back to Minnesota from Las Vegas.<sup>11</sup>

11. On March 23, 2009, the Wright County Sheriff's Department contacted Wright County Human Services after learning of Ms. Aune's injuries.<sup>12</sup> The detective investigating Ms. Aune's situation found the injuries to be "suspicious."<sup>13</sup>

12. Upon her discharge on March 26, 2009, Ms. Aune's treatment regimen was as follows:

pain medication including Tylenol 1,000 mg every 6 hours, fentanyl patch Duragesic 75 microgram per hour every 72 hour transdermal patch 75 microgram, fentanyl patch removed every 72 hours, Motrin 600 mg three times a day, Protonix 40 mg a day and psychiatric medications including Geodon 20 mg q.h.s. and p.r.n.<sup>14</sup>

Ms. Aune was also encouraged to pursue further counseling/therapy sessions with a therapist she had visited in the past.

13. On April 7, 2009, a Wright County licensing investigator visited Ms. Aune at her home to discuss the injuries sustained by Ms. Aune on March 17, 2009. Ms. Aune could only speculate what might have happened to her on that night. She wondered if she went outside to check on a noise and was assaulted while outside. Ms. Aune stated that the Wright County detective thought that she might have over-medicated herself and fell. She also shared that the doctors at NMMC thought that her injuries were a result of spousal abuse. Ms. Aune reiterated that she did not think her husband harmed her.<sup>15</sup>

14. By letter dated April 22, 2009, Wright County Human Services recommended to the Department that Ms. Aune's and Ms. Lovegren's license to provide family daycare be temporarily immediately suspended based on the March 23 conversation with the Wright County Sheriff's Department and the April 7 visit to Ms. Aune's home.<sup>16</sup>

15. Based on the County's recommendation, the Department issued an Order of Temporary Immediate Suspension to the Licensees on April 22, 2009. The Department agreed that the County could not ensure the safety of the children served

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<sup>10</sup> Ex. 4.

<sup>11</sup> Testimony of Joanne Lovegren.

<sup>12</sup> While the record is not entirely clear, the ALJ presumes that the hospital staff in Buffalo notified the Wright County Sheriff's Department about Ms. Aune's injuries.

<sup>13</sup> Ex. 3.

<sup>14</sup> Ex. 4 (Dennis Philander, M.D.).

<sup>15</sup> Ex. 3.

<sup>16</sup> Ex. 3.

by Ms. Aune and Ms. Lovegren.<sup>17</sup> The Department found that the health, safety, and rights of the children in care were in imminent risk of harm. The Order informed Licensees of their right to appeal the decision, which they did in a timely manner.<sup>18</sup>

16. By letter dated April 27, 2009, Ms. Aune's family nurse practitioner discussed Ms. Aune's ability to continue with licensed daycare. She stated:

I feel it would be inappropriate for her to care for children because of her limited mobility of her right arm and most importantly because she is on a transdermal narcotic patch and oral narcotics. I believe it would not be in the best interest of these children to be under her care at this time. When she is completely off of narcotics, then I believe she may be appropriate to resume her duties as a daycare provider, but as long as she is on narcotics I do not believe that it is appropriate for her to provide daycare.<sup>19</sup>

17. In a letter dated June 8, 2009, Ms. Aune's family nurse practitioner stated that Ms. Aune had been weaned off all oral narcotic analgesics, but that she continued to be on a lowering dose of a narcotic pain patch. The nurse practitioner wrote that as long as Ms. Aune was using the pain patch there should be a second adult present if she is caring for children.<sup>20</sup> Ms. Aune discontinued use of the pain patch on or about June 15, 2009.<sup>21</sup>

18. Currently, Ms. Aune struggles with depression, anxiety, sleep deprivation, and periodic migraine headaches. She takes four different medications to deal with these conditions.<sup>22</sup>

19. The Licensees' daycare has never had any complaints by parents or problems with the County. Ms. Aune does not have a history of memory lapses.

20. On June 16, 2009, the Notice of and Order for Hearing was served on the Licensees setting the hearing to take place on July 17, 2009.

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

### CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction to consider this matter pursuant to Minn. Stat. § 14.50 and 245A.07, subds. 2 and 2a.

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<sup>17</sup> Ex. 2.

<sup>18</sup> Exs. 8-11.

<sup>19</sup> Ex. 1.

<sup>20</sup> Ex. 12.

<sup>21</sup> Testimony of Amy Aune; Ex. 12 (letter from Carol Brinkman dated June 29, 2009).

<sup>22</sup> Testimony of Amy Aune.

2. The Department, through Wright County Human Services, gave proper and timely notice of the hearing and has complied with all procedural requirements.

3. Under Minn. Stat. § 245A.07, subd. 2, if a license holder's actions or violations, or the actions of others, pose an imminent risk of harm to the health, safety, or rights of persons served by the license holder's program, the Commissioner must act immediately to temporarily suspend the license and inform the licensee by personal service.

4. If a license holder appeals an order immediately suspending a license, the scope of the resulting expedited hearing is limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the Commissioner's final order under Minn. Stat. § 245A.07, subd. 3, following the immediate suspension. The burden of proof in temporary immediate suspension hearings is limited to the Commissioner's demonstration 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.

5. The Administrative Law Judge shall recommend "whether the immediate suspension should remain in effect pending the Commissioner's final order regarding a final licensing sanction."<sup>23</sup>

6. The Department has demonstrated reasonable cause to believe that, because of the unexplained nature of the events involving Licensee Amy Aune on March 17, 2009, an imminent risk of harm is posed to the health and safety of the children served by the Licensees' daycare program.

7. It is appropriate that the Order of Temporary Immediate Suspension in this matter remain in effect, pending the Commissioner's final order regarding the status of the license.

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

**RECOMMENDATION**

IT IS RECOMMENDED that the Order of Temporary Immediate Suspension, suspending the family child care license of Amy Aune and Joanne Lovegren, be AFFIRMED, and CONTINUED in effect until a final Order of the Commissioner is issued regarding the status of their license.

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<sup>23</sup> Minn. Stat. § 245A.07, subd. 2a(a).

Dated: July 30, 2009

s/Richard C. Luis  
RICHARD C. LUIS  
Administrative Law Judge

Reported: Recorded Digitally

### NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this report to file Exceptions to the report. At the end of the exceptions period, the record will close. The Commissioner then has 10 working days to issue his final decision. Parties should contact Cal Ludeman, Commissioner of Human Services, P.O. Box 64998, St. Paul, MN 55164-0998, (651) 296-2701, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 10 working days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a.

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 issue in this case is whether the Licensees pose an imminent risk of harm to the health, safety, or rights of the children served by their daycare. The Department has the burden of showing that there is reasonable cause to believe that Licensee Aune's situation poses an imminent risk of harm to the health, safety, or rights of persons in her care. This is a modest standard, and is intended to assure that vulnerable children are protected until there can be a full hearing and final determination by the Commissioner.

The Department, through the County, must present reliable oral testimony and/or documentary evidence in support of a finding of reasonable cause. If the Licensee presents little or no evidence but merely challenges the adequacy of the evidence presented by the County, the Administrative Law Judge should find reasonable cause if the facts appearing in the record would preclude the granting of a motion by the Licensee to dismiss at the close of the evidence presented.

There is an adequate showing of reasonable cause unless the Administrative Law Judge is satisfied that the evidence offered by the Licensee makes facts necessary to establish an essential element of the licensing violation inherently incredible. It is similar to the probable cause showing that must be made in a criminal proceeding.<sup>24</sup>

The County put forth evidence that called into question the cause of Amy Aune's injuries as well as her use of prescription pain medication and her mental health. The County showed that Ms. Aune experienced a blackout that lasted at least a few hours on the night of March 17, 2009. Ms. Aune did not contest that this occurred and could not explain why it occurred.

The only material evidence offered by the Licensees was conjecture about how Ms. Aune's injuries may have happened and the assertion that Ms. Aune was no longer taking narcotic medications. Nothing offered by the Licensees corroborates Ms. Aune's assertions that she does not pose an imminent risk of harm to children in her care, in light of what has occurred.

Because the exact cause of Ms. Aune's injuries remains unknown and there is a possibility of non-accidental trauma, the Administrative Law Judge cannot determine that the Licensees no longer present a risk of harm to the children in their daycare program. It is of great concern that Ms. Aune may have "lost" several hours, during which time she suffered serious physical injuries for which she cannot account. If the Licensee is subject to blackouts or loss of consciousness (one possible explanation for her not knowing what happened on March 17), any children in her care are exposed to a risk of harm or unsafe situations.

It is clear that there are many questions yet to be answered in this investigation. Accordingly, the Order of Temporary Immediate Suspension should remain in effect until the County completes investigation of the circumstances surrounding Amy Aune's injuries. If Wright County determines further discipline is appropriate, or determines no disciplinary action is warranted, it can recommend accordingly to the Commissioner. Then, the Commissioner can make a final disciplinary order or decline to do so. Until that process is complete, the Temporary Immediate Suspension should remain in effect.

**R. C. L.**

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<sup>24</sup> See *State v. Florence*, 306 Minn. 442, 239 N.W.2d 892, 897, 903-04 (1976).