

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary Immediate  
Suspension of the License of Kristi  
Sondrol to Provide Family Child Care  
under Minnesota Rules, parts 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 15, 2010, at the Polk County Justice Center, 816 Marin Avenue, Crookston, Minnesota 55716. The OAH record closed on December 15, 2010, at the end of the hearing.

Larry D. Orvik, Assistant Polk County Attorney, appeared on behalf of Polk County Social Services (the County) and the Minnesota Department of Human Services (the Department). Larry D. Espel, Esq., Greene Espel, Minneapolis, MN, appeared on behalf of Kristi Sondrol (Licensee).

**STATEMENT OF THE ISSUE**

Has the Department established that there is reasonable cause to believe that a failure by Licensee to comply with applicable law or rule, the actions of Licensee or other individuals, or conditions in the program, pose an imminent risk of harm to the health, safety or rights of children served by Licensee?

The Administrative Law Judge concludes that there is not reasonable cause to believe that children in Licensee's care are at imminent risk of harm.

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

**FINDINGS OF FACT**

1. Until November 12, 2010, Licensee operated a daycare center in her home in East Grand Forks, Minnesota.<sup>1</sup>

2. During 2010, Licensee completed the required annual training course regarding Sudden Infant Death Syndrome ("SIDS"). Part of that training includes the recommendation that infants be placed upon their backs for sleeping. The training also

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<sup>1</sup> Testimony of Kristi Sondrol; Exhibits 2 and 3, Order of Temporary Immediate Suspension.

includes the recommendation that, if an infant is able to roll over on its own and it does so, it may be left that way.<sup>2</sup>

3. On Friday, October 8, 2010, Licensee was caring for children in her daycare. One of the children in her care was a five-month-old infant.<sup>3</sup>

4. Licensee knew that the infant would be going to a football game with his mother that evening. The infant was “a little cranky” so, just before 3:00 p.m., Licensee laid the infant down on his back in a bedroom crib for a nap. Licensee left the door to the bedroom partially open. Licensee checked on him every 15 minutes. The first two times she checked on him he opened his eyes, because the bedroom door squeaks.<sup>4</sup>

5. When Licensee checked on the infant at 4:00 p.m., he had rolled over onto his stomach with his head to the side and was asleep. Licensee stepped into the room four or five feet and could see that he was breathing because of the movement of his body.<sup>5</sup>

6. Trisha Trousil came into the daycare home just after 4:00 p.m. to pick up her child. Ms. Trousil has been one of Licensee’s daycare parents between six and seven years. Ms. Trousil has been a certified nursing assistant for 13 years and is certified to perform cardio-pulmonary resuscitation (“CPR”).<sup>6</sup>

7. Ms. Trousil was in Licensee’s home when the infant’s mother came to pick him up at approximately 4:20 p.m.<sup>7</sup>

8. Licensee went to be bedroom to retrieve the infant. He was lying in the crib with his face down and was not breathing. Licensee rolled him over and picked him up and ran down the hall.<sup>8</sup> Licensee yelled “Oh my God, oh my God, he’s not breathing. Call 911.”<sup>9</sup>

9. Ms. Trousil called 911 on a cell phone as Licensee laid the infant on the kitchen floor and began performing CPR. The infant’s skin was ashen and pale but he was neither cold nor blue.<sup>10</sup>

10. Ms. Trousil then handed the cell phone to Licensee and told her to give directions to the emergency responders because she was uncertain of whether the address was a street or an avenue and believed Licensee would be better suited to give

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<sup>2</sup> Test. of K. Sondrol.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Test. of Trish Trousil.

<sup>7</sup> *Id.*

<sup>8</sup> Test. of K. Sondrol.

<sup>9</sup> Test. of T. Trousil.

<sup>10</sup> *Id.*; Test. of K. Sondrol.

prompt and accurate directions to the emergency response team. Ms. Trousil took over the CPR on the infant.<sup>11</sup>

11. Licensee went into the living room to continue giving information because the infant's mother was screaming hysterically in the kitchen. Licensee gave the directions and told the 911 operator that they had a five-month-old infant that had no heartbeat and was not breathing.<sup>12</sup>

12. The police and fire rescue team arrived and took over the CPR on the infant from Ms. Trousil.<sup>13</sup> The infant was resuscitated and survived.<sup>14</sup>

13. Licensee reported the October 8, 2010, incident to the County licensor first thing on Monday morning, October 12, 2010.<sup>15</sup>

14. Information received by the County from the hospital contained no indication that the infant had been maltreated. The County child protection unit did not accept the matter for investigation.<sup>16</sup>

15. The County immediately commenced a licensing investigation. The County licensor interviewed Licensee on October 11, 2010. Licensee cooperated fully with the County's investigation and answered all questions.<sup>17</sup>

16. There was no indication of maltreatment and no supporting medical information indicating any maltreatment. The County, in consultation with the Department, determined that an Order of Temporary Immediate Suspension (TIS) of Licensee's family child care license was not warranted.<sup>18</sup>

17. On November 5, 2010, the County interviewed the infant's parents. Information received from the parents suggested that there were "discrepancies" between the parents' information and Licensee's information. The "discrepancies" had to do with how the infant had been put down to sleep, whether or not he had been crying, whether or not there was drying mucus and tears on his face, and a choking incident at a different time involving a different child.<sup>19</sup>

18. The principal discrepancy had to do with a previous near-choking incident.<sup>20</sup>

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<sup>11</sup> Test. of T. Trousil.

<sup>12</sup> *Id.*, Test. of K. Sondrol.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, Ex. 1; Test. of Sara Iverson, County child care licensor.

<sup>15</sup> Test. of S. Iverson.

<sup>16</sup> *Id.*; Ex. 1.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Test. of S. Iverson.

<sup>20</sup> *Id.*

19. Sometime prior to October 8, 2010, Licensee's husband was watching television in his recliner in the living room. He could also see a child sitting in a highchair in the kitchen that was eating the small cracker snacks known as "Goldfish." He saw the child put several in her mouth and appear to gag slightly. He watched her as she chewed and swallowed the mouthful of Goldfish. The child again put a number of the Goldfish in her mouth again, and again appeared to him to be gagging. He got up and went to the kitchen. By the time of his arrival she had chewed and swallowed the mouthful of Goldfish. He told Licensee what he observed. Licensee was across the table from the girl and serving snacks to other children.<sup>21</sup> Licensee had no memory of the incident.<sup>22</sup>

20. The concern expressed regarding the near-choking incident was the fact that Licensee's husband saw the incident and responded and Licensee did not.<sup>23</sup>

21. The Department directed the County to request a temporary immediate suspension of Licensee's license.<sup>24</sup> As directed, the County sent the Department a November 12, 2010 letter requesting a temporary immediate suspension of Licensee's license to provide family child care.<sup>25</sup> The basis for the request is stated as:

We received information from them<sup>26</sup> that one could conclude that Krisit [sic] was not forthcoming in her previous interview and contacts with Polk County Social Service Staff.<sup>27</sup>

22. On November 12, 2010, the Department issued Licensee an Order of Temporary Immediate Suspension (TIS). The TIS contains no specific articulable facts or circumstances other than to refer to an October 9, 2010, report received by the County.<sup>28</sup>

23. Following a timely appeal of the TIS by Licensee, on November 16, 2010, the Department issued a Notice of and Order for Hearing, scheduling a contested case hearing for December 15, 2010.

24. The County's investigation of the October 8, 2010 incident is complete. Any and all "discrepancies" have been resolved to the County's satisfaction.<sup>29</sup>

25. Daycare children may be placed back in Licensee's home without risk of harm.<sup>30</sup>

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<sup>21</sup> Test. of Danin Sondrol.

<sup>22</sup> Test. of S. Iverson.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*; Ex. 1.

<sup>26</sup> The infant's parents.

<sup>27</sup> Ex. 1.

<sup>28</sup> Exs. 2 and 3.

<sup>29</sup> Test. of S. Iverson.

<sup>30</sup> *Id.*

26. The County recommends that the TIS be lifted.<sup>31</sup>

27. The County cannot articulate any facts that would lead a reasonable person to suspect that children being cared for by Licensee would be in imminent risk of harm.<sup>32</sup>

28. The parents of eight or more daycare children support the reopening of Licensee's daycare program as soon as possible, and have every confidence in her skills and experience, as well as the overall environment and the kind way she delivers child care. They also express the hardships and adjustment difficulties their children have had during the TIS.<sup>33</sup>

29. One parent believes that Licensee should have been given an award rather than having her license suspended.<sup>34</sup>

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

### CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have authority to consider and rule on the issues in this contested case proceeding pursuant to Minn. Stat. §§ 14.50, 245A.07 and 245A.08.

2. If a license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals, or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the Commissioner shall act immediately to temporarily suspend the license.<sup>35</sup>

3. If a license holder appeals an order immediately suspending a license, the Commissioner shall request assignment of an administrative law judge within five working days of receipt of the license holder's timely appeal. A hearing must be conducted within 30 calendar days of the request for assignment.<sup>36</sup>

4. The Department gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule.

5. The hearing on a temporary immediate suspension is limited to a consideration of whether the temporary suspension should remain in effect pending the Commissioner's final decision.<sup>37</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Exs. 4-9.

<sup>34</sup> Ex. 9.

<sup>35</sup> Minn. Stat. § 245A.07, subd. 2.

<sup>36</sup> Minn. Stat. § 245A.07, subd. 2a(a).

<sup>37</sup> Minn. Stat. § 245A.07, subd. 2a (a).

6. At hearing, the burden of proof is on the Department to show that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule, the actions of another, or the conditions in the program, pose an imminent risk of harm to the health, safety, or rights of persons served by the program.<sup>38</sup>

7. "Reasonable cause" for the purpose of a temporary immediate suspension means:

there exist specific articulable facts or circumstances which provide the commissioner with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.<sup>39</sup>

8. There are neither articulable facts nor circumstances in the record that could lead to a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of children served by the Licensee. Therefore, the Department has failed to demonstrate reasonable cause to believe that there is a risk of imminent harm to the health or safety of children served by the Licensee.

9. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

10. The bases and reasons for these Conclusions are those expressed in the Memorandum that follows, and the Administrative Law Judge incorporates that Memorandum into these Conclusions.

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

**RECOMMENDATION**

Based upon these Conclusions, the Administrative Law Judge recommends that: the Order of Temporary Immediate Suspension suspending the family child care license of Licensee be RESCINDED.

Dated: December 29, 2010

s/M. Kevin Snell  
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M. KEVIN SNELL  
Administrative Law Judge

Reported: Digitally Recorded

<sup>38</sup> Minn. Stat. § 245A.07, subd. 2a (a).

<sup>39</sup> *Id.*

## **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, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, (651) 296-2701, St. Paul, MN 55101, 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**

At this stage, the County, on behalf of the Department, must demonstrate the existence of specific articulable facts or circumstances which provide the commissioner with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of children in the Licensee's care. This is a modest standard, intended to insure that vulnerable children are protected until there can be a full hearing and final determination on the underlying circumstances.

During an expedited hearing regarding a temporary immediate suspension, the Department must only present reliable oral testimony and/or reliable documentary evidence in support of a finding of reasonable cause. The Department and the Administrative Law Judge are entitled to rely on hearsay evidence linking the license holder (or any person present during the hours that children are in care) to an act that puts children at risk of imminent harm. The Department relied principally on the testimony of the County licensor. No investigative reports, medical reports, or police reports were offered into the record. The Department called one witness. The Licensee called three witnesses. There was no conflicting testimony regarding any facts. At this stage of the process, the Administrative Law Judge's task is to determine whether there is enough reliable evidence to maintain the suspension.

When the evidence offered by the Commissioner is reviewed in light of the modest "reasonable cause" standard of proof, the Administrative Law Judge concludes that the evidence is insufficient to establish a reasonable basis to suspect that children would be at imminent risk of harm in Licensee's care. As detailed below, there are insufficient articulable facts to warrant a cautious person to reasonably suspect that Licensee, another person in the day care home, or the conditions of the day care caused the infant to stop breathing, or that Licensee failed to do anything that she should have done.

First, there is no medical evidence to suggest that anything at Licensee's daycare on October 8, 2010, caused the infant to stop breathing. Second, there is no evidence in the record to suggest that Licensee failed to properly follow her SIDS training. Third, there is no evidence to suggest that Licensee failed to do anything that would be expected of her on October 8, 2010.

Upon finding the infant unresponsive, Licensee immediately directed Ms. Trousil to call 911. She commenced CPR as soon as possible. Licensee reported the incident as soon as the County was open for business and fully cooperated with the investigation.

Finally, there are simply no specific articulable facts or circumstances in the record which could provide the commissioner with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of children in the Licensee's care. The legal standard of Minn. Stat. § 245A.07, subd. 2a(a), is not met by the record in this case.

The ALJ agrees with the assessment and recommendation of the County. For these reasons, the ALJ finds reasonable cause is not present and recommends that the Commissioner immediately rescind the Order of Temporary Immediate Suspension.

**M. K. S.**