

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary Immediate
Suspension of the Family Child Care
License of JoAnn Steingraber

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came before Administrative Law Judge Eric L. Lipman upon an appeal by the Licensee, JoAnn Steingraber, from an Order imposing a Temporary Immediate Suspension of her family day care license.

Kirsten A. Simonds, Assistant Sterns County Attorney, appeared on behalf of the Sterns County Human Services and the Minnesota Department of Human Services (County and Department). Kristine A. Peterson-Lahr, Peterson Law Firm LLC, appeared on behalf of JoAnn Steingraber, the Licensee.

An evidentiary hearing was in Room 207 of the Sterns County Administration Center on June 21, 2011. Following the receipt of post-hearing submissions from the parties, the hearing record closed on June 30, 2011.

STATEMENT OF THE ISSUES

1. Did the Department demonstrate that reasonable cause exists to believe that the Licensee's actions pose an imminent risk of harm to the health, safety or rights of persons served by her child care program?

2. If the Department did establish reasonable cause, did Ms. Steingraber establish that, at the relevant times, she was in full compliance with applicable statutes and rules?

The Administrative Law Judge concludes that the Department did show reasonable cause that Ms. Steingraber's lack of proper supervision on March 8, 2011 posed an imminent risk of harm to the health or safety of eight young children. Ms. Steingraber did not establish that at the relevant times, she was in full compliance with applicable statutes and rules.

Based upon the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Ms. Steingraber operates a family day care out of her home in St. Stephen, Minnesota.¹

2. Ms. Steingraber holds DHS License Number 115723-3-FCC. Under the terms of that license, with two adult caregivers present, Ms. Steingraber is permitted to provide day care for no more than 14 children at any one time. Additionally, the license limits the total number of children who have not reached school age that may be under care. Of the ten children authorized, no more than of these 4 may be infants or toddlers, and no more than 3 of those children may be infants.²

3. Ms. Steingraber first obtained licensure for her family day care approximately 29 years ago.³

4. The Steingraber family has made considerable investments in the family home so as to make it functional and useful as a family day care. The day care operations are undertaken on the ground floor of the home – which is accessible from a set of dual entryways on either side of the home. There are stairways leading down into the licensed areas from both entry ways. Within the licensed spaces there is a large play area and several adjacent rooms for other daycare uses – such as a changing room, a bathroom and spaces for children to nap.⁴

5. Above the ground floor, accessible by stairs from the two entryways is the main floor of the Steingraber home. On this main floor, there is a kitchen in which the meals for children under care are prepared and the non-licensed, family living spaces for the Steingraber family.⁵

6. The Licensee is assisted in the daycare operations by her daughter, Sara.⁶

7. At 8:30 a.m. on March 8, 2011, Ms. Steingraber had 8 pre-school children under care. The children ranged in ages from a few months old to five years old.⁷

8. At about this time, Ms. Steingraber left the ground floor of the day care home, for the kitchen on the level above, to prepare a bottle for one of the children under care. While she was in the kitchen, Ms. Steingraber had an attack of acute

¹ Testimony of JoAnn Steingraber; Exhibit 7.

² Exhibit 7.

³ Test. of J. Steingraber.

⁴ *Id.*

⁵ Test. of J. Steingraber; Testimony of Pamela Acheson.

⁶ Test. of P. Acheson; Test. of J. Steingraber.

⁷ Test. of P. Acheson; Ex. 8

abdominal pain – and believed that she might soil herself. She went immediately to the bathroom.⁸

9. At this time, Sara Steingraber, the Licensee's helper, was sleeping in an adjacent bedroom. While seated on the toilet, the Licensee called out to her daughter, but Sara did not respond to her mother's call.⁹

10. While Ms. Steingraber was in the main floor bathroom, Mr. Kurtz, the father of two of the children under care arrived at the day care home. Mr. Kurtz recalled that upon his arrival the clock in the daycare entryway read 8:40 a.m.¹⁰

11. Mr. Kurtz lingered for a few moments in the foyer, hoping that the Licensee or some other adult might greet him; and bring his children to the entryway so that he would not need to remove his winter clothes. Seeing no one, he took off his snow boots and snowmobile suit and proceeded down to the main play area where his children were seated – Brant in a high chair and Caleb in a baby jumper.¹¹

12. For approximately 20 minutes, Mr. Kurtz visited with his sons and waited in the day care for the Licensee or some other caregiver to return. At or around 9:00 a.m., Mr. Kurtz telephoned his wife to tell her that their children were unattended in the day care and that he was returning home with them.¹²

13. Mr. Kurtz dressed again in his snowmobile suit and boots, tucked his one-year old son, Caleb, into the torso portion of the suit, and boarded a snowmobile with the boys for the 2 and ½ block ride home.¹³

14. The Licensee emerged from the bathroom in enough time to see the trio board a snowmobile at the end of her driveway and make their way down the street.¹⁴

15. The Licensee concedes that she was in the bathroom for approximately 20 minutes, no other caregiver was supervising the children at this time, and she does not deploy monitoring devices that would permit her to listen to events occurring on the ground floor while she is on the main floor of the day care home.¹⁵

⁸ Test. of J. Steingraber.

⁹ Testimony of Mark Kurtz.

¹⁰ *Id.*; compare also, Ex. 2.

¹¹ *Id.*; Ex. 2.

¹² Test. of M. Kurtz.

¹³ *Id.*

¹⁴ Test. of J. Steingraber.

¹⁵ *Id.*

16. Angry that their children, and other children under care, were left for such long periods without supervision, the Kurtzs cancelled their enrollment in the Licensee's day care on that same day.¹⁶

17. The Kurtzs' low opinion of the Licensee's attentiveness and skills as a caregiver, however, is not shared by all of the day care parents. Several of the day care parents testified at the evidentiary hearing to the effect that Ms. Steingraber is an excellent caregiver and that they are very eager to have their children cared for by the Licensee.¹⁷

18. Following an investigation into the events of March 8, 2011, Sterns County Licensing Supervisor Paul Weinmann urged the Department to issue an Order of Temporary Immediate Suspension. The Department issued the Order of Temporary Immediate Suspension on April 29, 2011.¹⁸

19. Ms. Steingraber timely appealed the Order of Temporary Immediate Suspension.¹⁹

Based upon 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 over this matter pursuant to Minn. Stat. §§ 14.50, 245A.07 and 245A.08.

2. The County and the Department have complied with all of the substantive and procedural requirements of law and rule.

3. At all times relevant to these proceedings, Ms. Steingraber was a licensed family child care provider.

4. The Commissioner of Human Services shall impose a temporary immediate suspension of a child care license "[i]f the license holder's actions or failure to comply with applicable law or rule . . . pose an imminent risk of harm to the health, safety, or rights of persons served by the program."²⁰

¹⁶ Testimony of Andrea Kurtz; Test. of M. Kurtz.

¹⁷ See, Testimony of Kurt Niemeyer; Testimony of Jessica Patrick; Testimony of Michelle Pogatchnik; Testimony of Karen Warner; Testimony of Valerie Partrick; *see also*, Exs. 16 through 20.

¹⁸ Exs. 1 and 6; Testimony of Paul Weinmann.

¹⁹ Notice and Order for Hearing, OAH Docket No. 8-1800-22057-2 at 2.

²⁰ Minn. Stat. § 245A.07 (2) (2010).

5. The temporary immediate suspension shall “remain in effect pending the commissioner’s final order under section 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension” if the Commissioner demonstrates “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.”²¹

6. The rules for a licensed child care facility require that a caregiver be “within sight or hearing of an infant, toddler or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child.”²²

7. The Department demonstrated reasonable cause for the temporary immediate suspension order by showing that Ms. Steingraber failed to sufficiently supervise eight children under care so as to prevent injury to these children.

8. The Department has demonstrated reasonable cause to believe that the Licensee’s inability, or unwillingness, to provide more thorough supervision of the children under care presents an imminent risk of harm to the health, safety, or rights of persons served by the program.

9. Ms. Steingraber did not establish that, at the relevant times, she was in full compliance with applicable statutes and rules.

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

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Commissioner of Human Services AFFIRM the Order for Temporary Immediate Suspension of JoAnn Steingraber’s license to provide family child care.

Dated: July 22, 2011

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally recorded.

²¹ Minn. Stat. § 245A.07 (2a) (a) (2010).

²² See, Minn. R. 9502.0315 (29a) (2007).

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 Lucinda Jesson, 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 Minnesota Statutes § 14.62 (2a). The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon 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 Statutes § 14.62 (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

I. Regulatory Standards

Minn. Stat. § 245A.07, subdivisions 2 and 2a establish the standard of proof that must be met to sustain a temporary immediate suspension order. The statute reads in pertinent part:

If the 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.

....

The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under section 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension. The burden of proof in expedited hearings under this subdivision shall be 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, or if the actions of other individuals or conditions in the program poses an imminent risk of harm to the health,

safety, or rights of persons served by the program. "Reasonable cause" 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.

These are modest standards; intended to assure that children are protected until there can be a more complete evaluation process, a more detailed hearing and a final determination.

Indeed, this risk of harm analysis has been likened to the burden to establish probable cause in a criminal proceeding.²³ The analysis begins with a presumption of innocence and requires the admission of probative evidence to overcome that presumption. At a minimum, an order of temporary immediate suspension must be supported by some substantial evidence of "imminent harm."²⁴

While the term "imminent harm" is not defined in either statute or rules, the Commissioner has defined the term "imminent danger" in the Family Day Care and Foster Care rules. This definition is instructive. "Imminent danger" includes circumstances in which a child is threatened with immediate and present neglect that is likely to result in serious physical injury.²⁵

The Administrative Law Judge must also determine if the evidence shows that the license holder's actions, at the time of the hearing, continue to pose an imminent risk of harm. This determination is made so as to inform the Commissioner as to whether the suspension should continue pending final determination of any appropriate licensing sanction.²⁶

II. Analysis

In this case, the temporary suspension should be maintained pending a final determination of the appropriate licensing sanction.

On this record, there are "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." The Licensee's failure to engage her daughter in the care of the children while she was attending to her stomach pain, and her lack of appreciation then, or still, that leaving 8 young children

²³ Compare, e.g., *State v. Florence*, 239 N.W.2d 892, 903-04 (Minn. 1976).

²⁴ See generally, Minn. Stat. § 14.69 (e) (2006); *In the Matter of the Temporary Immediate Suspension of the License of Laura Ellingson to Provide Family Child Care*, OAH Docket No. 3-1800-15905-2 (2004) (<http://www.oah.state.mn.us/aljBase/180015905.rt.htm>).

²⁵ See, Minn. R. 9543.0020 (11) (2005).

²⁶ See, *In the Matter of the Temporary Immediate Suspension of the License of Sandra Julkowski*, OAH Docket No. 6-1800-21321-2 (2010) (<http://www.oah.state.mn.us/aljBase/180021321%20rt%20bjh.htm>).

unattended for 20 minutes was potentially very dangerous, satisfies the standards for present risk to persons served by the program. Given that an adult entered the day care home, remained for such a long time, and left the premises with two children under care before being observed, highlights just one of the many risks to the persons served by the program.

In light of the Licensee's skills, considerable experience, and strong support from some of the families for whom she provides care, it may be that it is appropriate for her to resume providing day care under certain conditions – such as a different staffing and coverage plan. Yet, until the County's investigation is completed, and the possibility of appropriate licensing conditions can be thoroughly evaluated, it would not be prudent to lift the suspension of her license.

E. L. L.