

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary
Immediate Suspension of the Family
Child Care License of Connie Bokman

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

This matter came on for hearing before Administrative Law Judge Mary E. McGinnis, on November 8, 2011, at the Rice County Government Services Building, in Faribault, Minnesota. The OAH record closed at the hearing's conclusion.

Catherine M. Miller, Assistant Rice County Attorney, 218 NW Third Street, Faribault, Minnesota, appeared for the Minnesota Department of Human Services (Department). Connie Bokman (Licensee) appeared on her own behalf and without counsel.

STATEMENT OF ISSUE

Should the temporary immediate suspension of the family child care license of Connie Bokman remain in effect because there is reasonable cause to believe that there is an imminent risk of harm to the health, safety, or rights of children in her care?

The Administrative Law Judge concludes that there is reasonable cause to believe that the Licensee's failure to comply with supervision rules poses an imminent risk of harm to the health, safety, or rights of children in Licensee's care and recommends that the Commissioner affirm the order of temporary immediate suspension.

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

FINDINGS OF FACT

1. Connie Bokman has been a licensed provider of family child care since 1991. She lives at 516 NW Eighth Street, Faribault, Minnesota.¹

2. On November 4, 2009, Ms. Bokman received a Correction Order from the Rice County Social Services – Licensing Division for failing to be within the sight or hearing of a fourteen-month toddler who had swallowed a Barbie doll

¹ Testimony of Coleen Peterson; Testimony of Connie Bokman.

shoe, and for a stairway gate not sturdily installed. Ms. Bokman had self-reported the swallowing of the shoe.²

3. On April 18, 2011, Ms. Bokman received a Correction Order from the Rice County Social Services – Licensing Division for smoking in the family child care home, and for allowing an infant to sleep in a car seat which is a violation of the Sudden Infant Death Syndrome (SDIS) reduction protocol.³

4. On August 9, 2011, the Minnesota Department of Human Services issued Ms. Bokman an Order of Conditional License for the two April 18, 2011 violations. The Order of Conditional License required that Ms. Bokman to pay a \$200.00 fine. Further the Order placed her license on conditional status for one year provided, among other provisions, that she maintain a safe sleeping plan for infants; complete eight hours of additional training by November 25, 2011, in addition to her annual training requirements; provide a copy of the Order of Conditional License to the parents of the children currently enrolled in her care; obtain these parents' signatures that they have been so informed of the Conditional License; and, by October 23, 2011, provide Rice County with these parents' signatures.⁴

5. As of this hearing, Ms. Bokman had not: paid the \$200.00 fine; developed the infant safety plan; nor provided Rice County with documentation that the parents' had been informed of the Conditional License.⁵

6. On October 3, 2011, at approximately 4:50 P.M., Ms. Bokman had five children in her care at her home. She picked up the baby, J.M., from his nap, and took him to the living room to change his diaper. While she was doing so, and unknown to her, the two three-year-old boys went out the side door to the backyard along with twenty-three-month-old L.M. The side door connects to a deck which has approximately three to four steps to the ground. The three year olds stayed in the back yard, and L.M. left the back yard.⁶

7. On October 3, 2011, at approximately the same time, Dennis Arne had been driving west on Eighth Street at Fifth Avenue, and saw a little boy off the curb, but not into the street. There are no stop signs or yield signs at this corner. Mr. Arne stopped his car, and honked his horn to alert the possible parents in the area that a little boy was loose.⁷

8. On the same date and approximate time, Cindy Pusateri, formerly known as and still known to her neighbors as Cindy Borst, heard a car honk outside her house. Ms. Pusateri lives one house east of Ms. Bokman on the

² Test. of C. Peterson; Ex. 2.

³ Test. of C. Peterson; Ex 3.

⁴ Test. of C. Peterson; Ex. 4.

⁵ Test. of C. Peterson.

⁶ Test. of C. Bokman; Exhibit 5.

⁷ Testimony of Jennifer Goodwin.

corner of Eighth Street and Fifth Avenue. Ms. Pusateri saw a little boy, who was L.M., at the end of the sidewalk on the grassy area next to the curb by the street sign. Ms. Pusateri who did not know L.M. thought that he might be the child of an Hispanic family across the street, but upon inquiry found that he was not. Whereupon Ms. Pusateri had her son call 911, and then had him go to Ms. Bokman's to see if the child belonged there.⁸

9. Ms. Bokman, upon discovering L.M. was missing, had her husband watch the three-year-olds in the backyard, and met Ms. Pusateri's son as she was going to the corner where she could see L.M. with Ms. Pusateri, Mr. Arne, and a police officer.⁹

10. On October 3, 2011, the initial 911 call regarding L.M. by Ms. Pusateri's son was received by the Faribault police at 4:57 P.M.; a police officer was dispatched at 4:59 P.M.; and, at 5:04 P.M. the police officer reported that the child's provider had been found.¹⁰

11. On October 3, 2011, at approximately 5:20 P.M., Ms. Bokman left a message on the phone of Colleen Peterson, Rice County Childcare Licensor, that L.M. had wandered away, been found, and was unharmed.¹¹

12. Ms. Peterson determined that Ms. Bokman violated Minn. R. 9502.0315, subp. 29a, which requires the day care provider be within sight or hearing of a toddler at all times. On October 7, 2011, the Department issued an Order of Temporary Immediate Suspension which was personally served on Ms. Bokman the same day.¹²

13. On October 11, 2011, the County requested assignment of an administrative law judge. On October 21, 2011, the County served the Notice and Order for Hearing on Ms. Bokman by U.S. Mail.

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

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subd. 2a, and 14.50 (2010). The Department gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule.

⁸ Testimony of Cindy Pusateri.

⁹ Test. of C. Bokman and C. Pusateri.

¹⁰ Test. of J. Goodwin.

¹¹ Test. of C. Peterson.

¹² Test. of C. Peterson; Ex. 1.

2. Providers of family child care are required to 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. For the school age child, it means a caregiver being available for assistance and care so that the child's health and safety is protected.¹³

3. 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.¹⁴

4. 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.¹⁵

5. 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 § 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension.¹⁶

6. The burden of proof in expedited hearings on a temporary immediate suspension 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 an imminent risk of harm to the health, safety, or rights of persons served by the program.¹⁷ "Reasonable cause" means there exist specific articulable facts or circumstances which provide a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.¹⁸

7. The Commissioner has demonstrated that there is reasonable cause to believe that the license holder's failure to comply with supervision rules poses an imminent risk of harm to the health, safety, or rights of persons served by the program.

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

¹³ Minn. R. 9502.0315, subp. 29a (2009).

¹⁴ Minn. Stat. § 245A.07, subd. 2

¹⁵ Minn. Stat. § 245A.07, subd. 2a(a).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services AFFIRM the temporary immediate suspension of the family child care license of Connie Bokman.

Dated: November 15, 2011

/s/ Mary E. McGinnis

MARY E. MCGINNIS
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

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 her 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.

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

Ms. Bokman does not dispute the critical facts. The child exited the house, and was gone from her sight and hearing for a minimum of fourteen minutes. She has been cited for lack of supervision in the past. Based on these facts, the record is sufficient to conclude that the temporary immediate suspension should continue in effect until the commissioner makes a final decision on a licensing sanction.

M.E.M.