

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

In the Matter of Temporary Immediate  
Suspension of the Family Child Care  
License of Elizabeth A. Lambus and  
Robert E. Lambus

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Timothy J. O'Malley on November 14, 2011, at the Stearns County Courthouse/Administrative Center in St. Cloud, Minnesota. At the request of the parties, the hearing record closed on November 23, 2011, thereby permitting the parties the opportunity to submit additional documents and closing arguments.

Heidi Santiago DeFord, Assistant Stearns County Attorney, appeared on behalf of the Department of Human Services (Department) and Stearns County Human Services (County). Robert and Elizabeth Lambus (Licensee) appeared pro se.

The Department called one witness: Jaclyn Eiyneck. The Licensee called one witness: Robert Lambus

The following exhibits were offered by the Department and admitted into evidence at the November 14, 2011, hearing:

- Exhibit 1 - Order of Temporary Immediate Suspension dated October 18, 2011
- Exhibit 2 - Stearns County Department of Human Services letter to Commissioner Jesson dated October 17, 2011
- Exhibit 3 - Minnesota Department of Human Services Family Child Care License No. 1053737-3-FCC issued to Elizabeth and Robert Lambus
- Exhibit 4 - Correction Order dated October 10, 2011
- Exhibit 5 - Stearns County Human Services Case Chronology Summary dated October 14, 2011

- Exhibit 6 - Stearns County Human Services document describing conditions during the October 14, 2011, visit at the Licensee's child care facility
- Exhibit 7 - Stearns County Human Services document describing license history of Robert and Elizabeth Lambus
- Exhibit 8 - Parent Evaluation dated December 2010
- Exhibit 9 - Photographs depicting conditions at the Licensee's child care facility on October 14, 2011
- Exhibit 10 - Correction Order dated October 10, 2011, including Licensee's responses
- Exhibit 11 - Stearns County Human Service's Case Chronology Summary describing conditions at the family child care facility on November 8, 2011.
- Exhibit 12 - Log describing photographs taken during the November 8, 2011, visit
- Exhibit 13 - Stearns County Human Services document describing conditions at the Licensee's child care facility during the November 8, 2011, visit
- Exhibit 14 - Photographs depicting conditions at the Licensee's family child care facility on November 8, 2011

The following exhibit was offered by the Licensee and admitted into evidence at the November 14, 2011, hearing:

- Exhibit 15 - A Service Master receipt for carpet cleaning services dated September 30, 2011

The following exhibit was provided by the Department and received at the Office of Administrative Hearings prior to the close of the record on November 23, 2011:

- Exhibit 16 - Department's closing argument document

The following exhibits were provided by the Licensee and received at the Office of Administrative Hearings prior to the close of the record on November 23, 2011:

- Exhibit 17 - Licensee's closing argument document
- Exhibit 18 - Photograph depicting both sides of Robert Lambus' business card

- Exhibit 19 - A communication to family child care parents entitled "Daycare Hours"
- Exhibit 20 - A communication to family child care parents describing changes
- Exhibit 21 - A communication to family child care parents entitled "Robert's House Rules"
- Exhibit 22 - A letter from parent Courtney Gapinski
- Exhibit 23 - A letter from parent Natoyia Beasley
- Exhibit 24 - Documents relating to a background check conducted on Tonja Jo Thomsen
- Exhibit 25 - A Minnesota State Fire Marshall Division Inspection and Compliance Order dated December 1, 2008
- Exhibit 26 - A letter from Stearns County Department of Human Services to Robert and Elizabeth Lambus dated October 10, 2011
- Exhibit 27 - Photographs depicting conditions at the Licensee's child care facility
- Exhibit 28 - A MNStreams.org training transcript for Robert Lambus dated November 22, 2011

### **STATEMENT OF THE ISSUES**

1. Did the Commissioner of the Department have reasonable cause to temporarily suspend Elizabeth A. Lambus and Robert E. Lambus' family child care license (License) on October 18, 2011?

The Administrative Law Judge concludes that the Department had reasonable cause to temporarily suspend Licensee's License.

2. Should the temporary immediate suspension of the Licensee's family child care license remain in effect because there is reasonable cause to believe that the actions of 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 Administrative Law Judge concludes that there is sufficient evidence that conditions at the Licensee's facility pose an imminent risk of harm to children and recommends that the Commissioner continue the order of temporary immediate suspension.

Based on the proceedings in this matter, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. Mr. Robert Lambus (Lambus) is a family child care provider in Stearns County.<sup>1</sup> He and his wife, Elizabeth Lambus, hold License No. 1053737-3-FCC.<sup>2</sup>

2. Ms. Jaclyn Eiyneck is a social worker employed by the Stearns County Department of Human Services. Her main responsibilities relate to family child care and foster care licensing matters.<sup>3</sup>

3. License holders are responsible for knowing applicable standards and for complying with those standards. All license holders, including Lambus, are made aware of the standards during orientation at the time licenses are issued, are provided a packet of documents including one setting forth applicable standards and rules, and are made aware of a website where they may access the standards and rules.<sup>4</sup>

4. Lambus acknowledged that his family child care facility was not compliant with standards and that the “environment may not have been a good situation.”<sup>5</sup> Lambus offered his “apologies as to the state and quality of the daycare at the time of the visits” and stated that he will endeavor “to never allow such a state to occur again.”<sup>6</sup> Lambus has pledged a willingness to continue cooperating with the Department to achieve compliance with family child care standards.<sup>7</sup>

5. Lambus was cooperative during each of Eiyneck’s visits to his family child care facility.<sup>8</sup>

### **License Background**

6. Licensee has held a license in Stearns County since 2009. Prior to that Licensee was licensed to provide family child care in Benton County.<sup>9</sup>

7. On October 18, 2001, the Commissioner of the Department issued an Order for Temporary Immediate Suspension of Licensee’s License. Licensee appealed that order.<sup>10</sup>

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<sup>1</sup> Test. of J. Eiyneck.

<sup>2</sup> Exhibit (Ex) 3.

<sup>3</sup> Testimony of Jaclyn Eiyneck.

<sup>4</sup> Test. of J. Eiyneck

<sup>5</sup> Test. of R. Lambus.

<sup>6</sup> Ex. 17.

<sup>7</sup> Test. of Eiyneck and Lambus; Ex. 17.

<sup>8</sup> Test. of Eiyneck.

<sup>9</sup> Test. of J. Eiyneck; Ex. 7.

<sup>10</sup> Ex. 1; Test. of J. Eiyneck and R. Lambus.

8. While providing family child care in Benton County, Licensee had several interactions with Benton County licensing authorities relating to complaints, facility visits and Correction Orders, including the following<sup>11</sup>:

- In August of 2004, the investigation of a complaint resulted in a Correction Order for failure to conduct a background study on a substitute caregiver and for not reporting a serious injury immediately.
- In July of 2005, the investigation of a complaint resulted in a Correction Order for cleanliness and clutter.
- In July of 2007, the investigation of a complaint resulted in a Correction Order for not conducting background checks on a substitute caregiver.
- In July of 2007, a Correction Order was issued for Crib Check Forms not being completed, first aid training not verified, no written or posted fire escape plan, extension cords accessible in a bedroom, an unlocked rifle in the basement, required forms not completed, and a need to move unsafe items out of reach of children.
- In July of 2007, a home visit was conducted after a complaint had been received and a Correction Order was issued for accumulation of dirt/rubbish, accessible hazardous materials and excess number of toddlers permitted to be in care.
- In March 2008, a home visit resulted in a Correction Order for elevated water temperature (144 degrees Fahrenheit), inoperable smoke detector, and garbage containers accessible to children.
- In October 2008, a Correction Order was issued for smoke detector defects, excessive water temperature (132 degrees Fahrenheit), unlicensed use of a bedroom without inspection/documentation, outlets not properly covered, and hazardous items accessible to children.
- In December 2008, a Correction Order was issued for excessive water temperature (137 degrees Fahrenheit), a smoke detector violation, failure to have a safety latch on a closet, and inadequate recordkeeping.

9. Since being licensed in Stearns County in 2009, and in addition to the instant licensing actions discussed below, Licensee had the following actions occur relating to their License:

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<sup>11</sup> Ex. 7.

- In June of 2009, a Correction Order was issued requiring that a fence be installed.
- In May 2010, a complaint alleging unsanitary conditions led to an unannounced home visit and a Correction Order for unsanitary and unhealthy conditions and for expired CPR certification.
- In September 2011, Lambus was terminated from the Child and Adult Care food Program for “submission of false claims for reimbursement.”<sup>12</sup>

### **October 5, 2011, Visit to the Facility**

10. At approximately 3:45 p.m. on October 5, 2011, Eiyneck conducted an unannounced visit to the Licensee’s family child care facility.<sup>13</sup> The following conditions existed in the facility on October 5, 2011<sup>14</sup>:

- The water temperature was at 139 degrees Fahrenheit.<sup>15</sup>
- The facility was unsanitary, as evidenced by accumulated dirt in several rooms, urine in an unflushed toilet, dirty underwear and a towel on the bathroom floor, and food scraps and crumbs on a floor and table.
- Toxic substances were accessible to children, as evidenced by a chemical aerosol can in the daycare area, diaper products in the daycare area, personal care products in the bathroom, and detergents in the laundry/furnace room.
- Hazardous materials were accessible to children, as evidenced by butter knives on a low counter and a tool with corkscrew in the bathroom.
- A child safety lock on a door leading upstairs from the daycare area which would prevent a means of egress for the children.
- The exterior of the facility was not suitable for providing daycare as evidenced by boxes and other items covering much of the driveway, an open garage door permitting access by the children to tools, an open gate from the outside play area permitting access to a rabbit cage, piles of rabbit feces on the ground, and trash including empty pop cans and glass in areas of the yard and garage accessible to children.

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<sup>12</sup> Ex. 7.

<sup>13</sup> Test. of J. Eiyneck and R. Lambus; Ex 2.

<sup>14</sup> Test. of J. Eiyneck; Exs. 2 and 4.

<sup>15</sup> This exceeds the maximum permissible temperature of 120°; Ex. 4.

- Clothes and other combustible items were within 36 inches of a furnace.
- A 15 month old toddler was in a highchair without a safety strap in place, was able to stand in the chair, and held a whole piece of bread that could have posed a choking hazard.

11. After the October 5, 2011, visit and after engaging in a staffing discussion, Eiyneck issued and mailed to Licensee a Correction Order on October 10, 2011.<sup>16</sup> Lambus received the Correction Order on October 12, 2011.<sup>17</sup> The Correction Order listed 8 distinct violations and set a deadline for correcting all of those violations as “immediately.”<sup>18</sup> The Correction Order set October 20, 2011, as the date by which Licensee was to submit documentation that all corrections had been made.<sup>19</sup>

12. A Temporary Immediate Suspension Order was not sought immediately after the October 5, 2011, visit because some of the conditions observed may have been situational and a decision was made to issue a Correction Order and conduct a follow-up visit.<sup>20</sup>

### **October 14, 2011, Visit to the Facility**

13. At approximately 1:30 p.m. on October 14, 2011, Eiyneck, accompanied by coworker Susan Welle, conducted an unannounced visit at the Licensee’s family child care facility. The purpose of the visit was to determine if the violations cited in the Correction Order had been corrected, and to assess the current conditions of the facility.<sup>21</sup>

14. Welle took 128 photographs during the October 14, 2011, visit.<sup>22</sup>

15. On October 14, 2011, the following conditions existed at the Licensee’s family child care facility<sup>23</sup>:

- Terry cloth material covering the diaper changing area was dirty and stained.<sup>24</sup>
- Multiple electric cords attached to electronics and/or computer equipment on a shelf hung loose and ran vertically down the wall within reach of children.<sup>25</sup>

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<sup>16</sup> Test. of J. Eiyneck; Ex. 4

<sup>17</sup> Test. of R. Lambus.

<sup>18</sup> Test. of J. Eiyneck; Ex. 14.

<sup>19</sup> Test. of J. Eiyneck; Ex. 14.

<sup>20</sup> Test. of J. Eiyneck.

<sup>21</sup> Test. of J. Eiyneck; Ex. 5.

<sup>22</sup> Test. of J. Eiyneck; Ex. 9.

<sup>23</sup> Test. of J. Eiyneck; Exs. 5 and 6.

<sup>24</sup> Ex. 9 (photos 95-96).

<sup>25</sup> Ex. 9 (photos 99-101).

- A hole in the wall left sheetrock exposed.<sup>26</sup>
- There was accumulated dirt, food scraps and crumbs and significant clutter throughout the facility.<sup>27</sup>
- Toxic substances and hazardous materials were accessible to the children.<sup>28</sup>
- A prescription drug bottle was on the floor accessible to the children.<sup>29</sup>
- A door leading to an attached garage is not self-closing.<sup>30</sup>
- Plastic bags were accessible to children in several locations throughout the facility.<sup>31</sup>
- Knives were not properly secured.<sup>32</sup>
- A number of access points, including a refrigerator door, a closet door, numerous cupboard doors and numerous drawers, that should have been equipped with kinderlocks did not contain such locks.<sup>33</sup>
- The toilet in the lower level bathroom was not clean and appeared to contain urine.<sup>34</sup>
- The toilet in the upper level bathroom was not clean and appeared to contain urine and feces.<sup>35</sup>
- Several garbage cans were full or overflowing.<sup>36</sup>
- The water temperature had been properly adjusted to below 120 degrees Fahrenheit.<sup>37</sup>
- A 15 month old toddler was left unattended for several minutes on a waist-high bed.<sup>38</sup>

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<sup>26</sup> Test. of J. Eiyneck.

<sup>27</sup> Ex. 9 (numerous photos including photos 1-3, 6-10-25-31, 34, 38, 44-49, 50-52, 56, 59-64, and 69-84).

<sup>28</sup> Ex. 9 (photos 11, 15-24, 62, 69-70 and 77).

<sup>29</sup> Ex. 9 (photos 48-49).

<sup>30</sup> Test. of J. Eiyneck.

<sup>31</sup> Ex. 9 (photos 1, 12, 14, 19, 22, 29-30, 38-46, 61, 74 and 102-103).

<sup>32</sup> Ex. 9 (photos 50 and 57-58).

<sup>33</sup> Test. of J. Eiyneck.

<sup>34</sup> Ex. 9 (photos 12-14).

<sup>35</sup> Ex. 9 (photos 66 and 68).

<sup>36</sup> Ex. 9 (photos 12, 14, 30 and 68).

<sup>37</sup> Test. of J. Eiyneck.

- Piles of rabbit feces were in several locations in the yard outside of the facility.<sup>39</sup>
- Records, including crib inspection documentation, fire/storm drill logs, and childrens' forms, were not up to date.<sup>40</sup>

### **November 8, 2011, Visit to the Facility**

16. At approximately 1:10 p.m. on November 8, 2011, Eiyneck, accompanied by coworker Welle, conducted an unannounced visit at the Licensee's family child care facility. Licensee's family child care license was in a suspended status and no child care services were being provided. The purpose of the visit was to assess the current conditions of the facility.<sup>41</sup>

17. Welle took 52 photographs during the November 8, 2011, visit.<sup>42</sup>

18. On November 8, 2011, the following conditions existed at the Licensee's family child care facility<sup>43</sup>:

- Overall, conditions had improved since the October 14, 2011, visit.<sup>44</sup>
- Kinderlocks had been installed on drawers, cabinet doors, closet doors and bedroom doors.<sup>45</sup>
- The hole in the sheetrock had been patched.<sup>46</sup>
- A lock had been installed on the gate outside of the facility.<sup>47</sup>
- Safety plugs had been installed on electrical outlets.<sup>48</sup>
- The toilets and the areas immediately around the toilets had been cleaned.<sup>49</sup>
- There were still areas with accumulated dirt and clutter throughout the facility.<sup>50</sup>

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<sup>38</sup> Test. of J. Eiyneck.

<sup>39</sup> Ex. 9 (photos 104-109).

<sup>40</sup> Ex. 9 (photos 86-93).

<sup>41</sup> Test. of J. Eiyneck.

<sup>42</sup> Test. of J. Eiyneck; Ex. 14.

<sup>43</sup> Test. of J. Eiyneck; Exs. 11 and 13.

<sup>44</sup> Test. of J. Eiyneck.

<sup>45</sup> Test. of J. Eiyneck; Ex. 14 (photos 1-3, 6, 11-14, 18, 22, 27, 30, 33, 35 and 39).

<sup>46</sup> Test. of J. Eiyneck; Ex. 13.

<sup>47</sup> Test. of J. Eiyneck; Ex. 14 (photo 42).

<sup>48</sup> Test. of J. Eiyneck; Ex. 15 (photo 4).

<sup>49</sup> Exs. 11, 13 and 14 (photos 15-17, 27 and 28).

<sup>50</sup> Test. of J. Eiyneck; Exs. 11, 13 and 14 (photos 15, 19 and 23-25).

- Shelving and combustible items were within 36 inches of the hot water heater.<sup>51</sup>
- Electrical cords hanging down from a shelf or still within reach of children.<sup>52</sup>
- Piles of rabbit feces remained in the yard (although with the installation of a padlock on the gate, the area of the yard with the feces would not have been accessible to children).<sup>53</sup>
- The covering on the diaper changing table remained dirty and stained.<sup>54</sup>
- Shelving and other combustible items had been moved away from the furnace.<sup>55</sup>
- The door to the garage was not self-closing.<sup>56</sup>

19. During the November 8, 2011, visit, Eiyneck observed substantial improvement in the conditions of some areas of the facility, but also observed numerous violations. Eiyneck concluded that the facility's conditions remained below licensing standards and that those conditions continued to pose an imminent risk to the safety of children. Eiyneck's conclusion was based on both the specific violations observed and on Licensee's history of corrective orders, including his inability to maintain corrected conditions over time.<sup>57</sup>

### **Corrective Actions**

20. After receiving the October 10, 2011, Correction Order, after the October 14, 2011, visit, and again after the November 8, 2011, visit, Lambus took steps to correct inadequacies and to bring the facility up to required standards.<sup>58</sup> Lambus took the following corrective actions:

- Had the carpeting professionally cleaned.<sup>59</sup>
- Began process for enrolling in a child care provider course.<sup>60</sup>

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<sup>51</sup> Test. of J. Eiyneck; Ex. 14 (photo 21).

<sup>52</sup> Exs. 11, 13 and 14 (photo 10).

<sup>53</sup> Test. of J. Eiyneck; Ex. 14 (photo 44-51).

<sup>54</sup> Exs. 11, 13 and 14 (photos 7-9).

<sup>55</sup> Exs. 11 and 14 (photo 20).

<sup>56</sup> Test. of J. Eiyneck; Ex. 13.

<sup>57</sup> Test of J. Eiyneck.

<sup>58</sup> Test. of R. Lambus.

<sup>59</sup> Ex. 15; Test. of R. Lambus.

<sup>60</sup> Test. of R. Lambus; Ex. 28.

- Hired a cleaning person to come to the facility for 1 to 3 hours per day, 5 days per week, Monday through Friday, to vacuum, wash toys and complete other cleaning services.<sup>61</sup> Background investigation request on this person was submitted to Stearns County.<sup>62</sup>
- The shelves and hanging electric cords that posed a danger to children were relocated to a safe location.<sup>63</sup>
- Significantly reduced, and plans to eliminate, evening and weekend daycare services; thereby providing time to complete projects and ongoing maintenance tasks to promote a safer, cleaner environment.<sup>64</sup>
- Installed a lock on the gate to restrict children's access to any areas of the yard outside of the fenced play area.<sup>65</sup>
- Removed boxes and other items from the driveway.<sup>66</sup>
- Installed kinderlocks on drawers, cabinet doors, closet doors, and bedroom doors to restrict children from accessing hazardous materials or dangerous items.<sup>67</sup>
- Installed plugs on electrical outlets.<sup>68</sup>
- Patched the hole in the sheetrock.<sup>69</sup>
- Added shelves in the diaper changing area to safely store supplies.<sup>70</sup>
- Cleaned the areas by the toilets.<sup>71</sup>
- Moved shelving and combustible items away from the furnace and the water heater.<sup>72</sup>
- Cleaned much of the home including the removal of dirt, food crumbs and much of the clutter.<sup>73</sup>

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<sup>61</sup> Test. of R. Lambus.

<sup>62</sup> Test. of R. Lambus, Ex. 24.

<sup>63</sup> Test. of R. Lambus; Ex. 27 (photos 1, 2 and 5).

<sup>64</sup> Test. of R. Lambus.

<sup>65</sup> Test. of R. Lambus and J. Eiyneck; Ex. 14 (photo 42).

<sup>66</sup> Test. of R. Lambus and J. Eiyneck.

<sup>67</sup> Test. of R. Lambus and J. Eiyneck; Exs. 11 and 14 (photos 1-3, 6, 11-14, 18, 22, 27, 30, 33, 35 and 39).

<sup>68</sup> Exs. 14 (photo 4) and 27 (photo 3).

<sup>69</sup> Test. of R. Lambus and J. Eiyneck; Ex. 13.

<sup>70</sup> Test. of R. Lambus; Exs. 11, 13 and 14 (photo 5).

<sup>71</sup> Test. of R. Lambus; Exs. 11, 13 and 14 (photos 15-17, 27, 28).

<sup>72</sup> Test. of R. Lambus, Exs. 14 (photo 20) and 27 (photo 4).

<sup>73</sup> Test. of R. Lambus and J. Eiyneck; Exs 11, 13 and 14.

- Turned the water heater down to less than 120 degrees Fahrenheit.<sup>74</sup>
- Removed child safety lock thereby permitting children egress from the lower level.<sup>75</sup>
- Additionally, Lambus plans to no longer keep the rabbit if his family child care license is reinstated.<sup>76</sup>

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

### **CONCLUSIONS**

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction consider the appeal of the Temporary Immediate Suspension.<sup>77</sup>

2. The Department through Stearns County Family Services gave proper and timely notice of the hearing and has complied with all procedural requirements of law. This matter is properly before the Department and the Administrative Law Judge.

3. The Commissioner shall act immediately to temporarily suspend a license 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.”<sup>78</sup>

4. At a hearing appealing an Order of Temporary Immediate Suspension, the burden of proof is on the Department to demonstrate that “reasonable cause exists to believe that 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.”<sup>79</sup>

5. “Reasonable cause” means that “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>80</sup> The Department may demonstrate reasonable cause by submitting statements, reports or affidavits to substantiate the allegations.<sup>81</sup>

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<sup>74</sup> Test. of R. Lambus and J. Eiyneck; Exs. 11 and 13.

<sup>75</sup> Test. of R. Lambus and J. Eiyneck; Exs. 11 and 13.

<sup>76</sup> Test. of R. Lambus.

<sup>77</sup> Minn. Stat. § 245A.07, subds. 2, 2a and 3; 14.50. Minnesota Statutes are cited to the 2010 Edition.

<sup>78</sup> Minn. Stat. § 245A.07, subd. 2.

<sup>79</sup> Minn. Stat. § 245A.07, subd. 2a (a).

<sup>80</sup> Minn. Stat. § 245A.07, subd. 2a.

<sup>81</sup> Minn. Stat. § 245A.08, subd. 3.

6. The Administrative Law Judge shall determine “whether the immediate suspension should remain in effect pending the Commissioner’s final order regarding a final licensing sanction.”<sup>82</sup>

7. The Department demonstrated at the hearing that there was reasonable cause to believe that there was an imminent risk of harm to the children in the Licensee’s care on the date of the Temporary and Immediate Suspension, October 18, 2011.

8. The Department demonstrated at the hearing that there was reasonable cause to believe that there would have been an imminent risk of harm to the children in the Licensee’s care if services had been being provided on the date of the unannounced visit, November 8, 2011.

9. Although Lambus has taken substantial steps to insure the safety and health of children who may be served at the family child care facility, the Department demonstrated at the hearing that there remains reasonable cause to believe that there remains an imminent risk of harm to children in Licensee’s care.

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

### **RECOMMENDATION**

The Administrative Law Judge recommends that the Order of Temporary Immediate Suspension of the Licensee’s family child care license be affirmed and remain in effect pending a final determination by the Commissioner.

Dated: December 1, 2011

/s/ Timothy J. O’Malley  
TIMOTHY J. O’MALLEY  
Administrative Law Judge

Reported: Digitally Recorded

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Human Services 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. Pursuant to Minn. Stat. §§ 14.61 and 245A.07, subd. 2a (b), the parties adversely affected have 10 calendar days after receiving this report to file exceptions to the report and request the opportunity to present argument to the

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<sup>82</sup> Minn. Stat. § 245A.07, subd. 2a (c).

Commissioner. At the end of the exceptions period, the record will close. The Commissioner then has 10 days to issue her final decision. Parties should contact Lucinda Jesson, Commissioner of Human Services, 540 Cedar Street, St. Paul, MN 55164, (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

### Standards

The Department has the burden of showing that there is reasonable cause to believe that an action by the license holder 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 in care. In the context of the applicable statute, ‘reasonable cause’ means that “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>83</sup> This is a modest standard, intended to assure that vulnerable children are protected until there can be a more complete evaluation process, a more detailed hearing and a final determination.

The Department may demonstrate reasonable cause by submitting statements, reports or affidavits to substantiate the allegations.<sup>84</sup>

There is an adequate showing of reasonable cause if there is a reasonable belief based on articulable facts that is stronger than a mere suspicion. In *in the Matter of the Temporary Immediate Suspension of the Family Child Care License of Strecker*, the Court of Appeals stated that, in applying the statutory standard of “reasonable cause” set forth in Minn. Stat. § 245A.07, subd, 2, the Department must show that “the circumstances are sufficient to warrant a cautious person to reasonably believe that the [Licensee] posed an imminent risk of harm to the health or safety of her daycare children.”<sup>85</sup>

While the term “imminent risk of 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

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<sup>83</sup> Minn. Stat. § 245A.07, subd. 2a.

<sup>84</sup> Minn. Stat. § 245A.08, subd. 3.

<sup>85</sup> *In the Matter of the Temporary Immediate Suspension of the Family Child Care License of Strecker*, 777 N.W.2d 41, 46 (Minn. App. 2010), citing e.g. *State v. Childs*, 269 N.W.2d 25,27 (Minn. 1978) (defining the synonymous term probable cause as “circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty.”).

circumstances in which a child is threatened with immediate and present neglect that is likely to result in serious physical injury.”<sup>86</sup>

The Administrative Law Judge must determine if the evidence shows that the license holder’s actions continue to pose an imminent risk of harm at the time of the hearing to the persons served so that the suspension should continue pending final determination of any appropriate licensing sanction.<sup>87</sup>

## **Analysis**

Eiyneck conducted a thorough investigation and documented numerous violations at Licensee’s family child care facility. The conditions at the facility on October 14, 2011, posed an imminent risk of harm to the health and safety of children being served. Although the conditions improved by November 8, 2011, they were still substandard and would have posed an imminent risk of harm to the health and safety of children if the facility had been operational at that time.

Lambus is an experienced family child care provider. He has been a provider for many years, has been licensed in two Minnesota counties, has had numerous facility visits, and has had several Corrections Orders issued related to his licenses. The record shows that Lambus was aware of the standards for licensed family child care facilities. He knew he was responsible for operating his facility in a manner consistent with those standards. Further, Lambus acknowledged that his family child care facility was not operating in compliance with those standards.

Lambus cooperated with the Department’s investigation. His testimony was informed and credible. While acknowledging that his family child care facility fell below licensing standards, he pledged a willingness to take whatever steps may be required to bring the facility up to those standards.

In the past six weeks, Lambus has made progress in improving the conditions of his facility. However, not all asserted corrective actions have been verified. Moreover, some actions taken by Lambus relate to his ability to maintain a safe and healthy environment over time (i.e., eliminating weekend and evening services, hiring a cleaning person, enrolling in a daycare course). However, Lambus has an established history of not maintaining his facilities, over time, in a manner consistent with standards despite past Corrective Orders. Rescission of the Temporary Immediate Suspension Order is not appropriate without verification that all asserted improvements are in place and without greater assurance that those improvements will withstand the test of time.

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<sup>86</sup> See Minn. Rule. 9543.0(11) (2005).

<sup>87</sup> See *In the Matter of the Temporary Immediate Suspension of the Family Child Care License of P.C.*, Commissioner’s Order, OAH Docket No. 6-1800-16139-2, Nov. 8, 2004.

Based on the evidence submitted, there is reason to believe that allowing the Licensee to provide child care services at this time would place children at risk of harm. The Temporary Immediate Suspension should continue pending a final determination by the Commissioner.

**T. J. O.**