

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 Suzanne  
Rechtzigel To Provide Family Day Care

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on July 20, 2012, at the Freeborn County (the "County") Department of Human Services, 203 West Clark Street, Albert Lea, Minnesota 56007. The OAH record closed at the end of the hearing on July 20, 2012.

Erin O'Brien, Assistant Freeborn County Attorney, Albert Lea, Minnesota, appeared at the hearing as attorney for the Minnesota Department of Human Services (the "Department") and the County. Kevin Siefken, Christian & Peterson, PA, Albert Lea, Minnesota, appeared on behalf of the Licensee, Suzanne Rechtzigel.

**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 June 18, 2012, when her C2 license was suspended, Licensee operated a daycare program in her home in Albert Lea, Minnesota.<sup>1</sup>

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<sup>1</sup> Testimony of Suzanne Rechtzigel and Stacy Heusinkveld, Freeborn County Family Child Care Licensor; Ex. 1.

## Licensee's History

2. Licensee has provided licensed family child care for 30 years.<sup>2</sup>
3. Licensee operates her day care from 8:00 a.m. to 9:30 or 10:00 p.m. She accommodates parents that work on different shifts. Licensee typically cares for five or six children in the morning and a different group of five or six children for the later portion of the day.<sup>3</sup>
4. Licensee has had no complaints, incidents, determinations of maltreatment or neglect, disqualifications, or licensing sanctions of any kind in the years she has been a family child care provider, except for one unsubstantiated complaint in September 2011. The complaint was from a day care mother stating that her child told her that Licensee had put a pillow up against his cheek because he would not go to sleep.<sup>4</sup>
5. Licensee's 2011 written evaluations by day care parents all came back fine.<sup>5</sup>
6. Licensee has never subjected a day care child to corporal punishment.<sup>6</sup>

## Licensee's care of the Infant

7. On June 13, 2012, Licensee was caring for a three-month-old male infant. He had been in her care for approximately three weeks.<sup>7</sup>
8. Licensee also cared for the infant's one and one-half-year-old brother and five-year-old sister. The mother of the three children had once asked if the older children behaved when in Licensee's care. Licensee replied that they did. The mother expressed surprise, stating that they fought and did not behave at home.<sup>8</sup>
9. On June 13, 2012, between 9:00 and 9:30 a.m., the infant's mother's boyfriend dropped him off with Licensee. Other than napping longer than normal in the morning, he displayed no abnormal behavior. He smiled when she picked him up from his nap around 11:30 a.m. At that time the other children had finished their lunch and were going down for their naps. The infant was friendly, affectionate and happy.<sup>9</sup>
10. Licensee was feeding the infant a bottle when his mother arrived to pick him up at approximately 2:00 p.m. Another day care parent, Michelle Marks, arrived just before that time to drop off her children. She stayed to chat with Licensee after the

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<sup>2</sup> *Id.*; Ex. 2

<sup>3</sup> Test. of S. Rechtzigel.

<sup>4</sup> *Id.*; Test. of S. Heusinkveld; Ex. 1.

<sup>5</sup> Test. of S. Heusinkveld.

<sup>6</sup> Test. of S. Rechtzigel.

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

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

infant and his mother left. The infant was healthy, normal and looking around when taken by his mother. He exhibited no unusual movements.<sup>10</sup>

11. Ms. Marks would have reported any unusual behavior by the infant because, as a Certified Nursing Assistant, she is a mandated reporter of child abuse.<sup>11</sup>

### **Injuries to the Infant**

12. The infant was taken to the Albert Lea hospital emergency room at 6:20 p.m. on June 13, 2012, because he “was breathing funny.” He was later air lifted to the Mayo Clinic in Rochester.<sup>12</sup>

13. The infant was diagnosed with bilateral subarachnoid bleeding of his brain. The treating health care professionals classified his injuries as Non-Accidental Trauma. They reported that they were “leaning” towards shaken baby syndrome.<sup>13</sup>

14. The infant’s subdural hematomas are indicators of shaken baby syndrome. They are also indicators of other causes. The Mayo Clinic’s physician’s preliminary estimate for a time that his injuries occurred was the 12 hours prior to his admission at the Albert Lea hospital.<sup>14</sup>

15. The Mayo Clinic physicians have also called for genetic testing.<sup>15</sup>

16. The infant was taken off life support on June 15, 2012.<sup>16</sup>

### **Law Enforcement and Child Protection Investigations**

17. Both County child protection and the Albert Lea Police Department have opened investigations into the cause of the infant’s death. County child care licensing is relying on the investigations of child protection and law enforcement. The child protection investigation is on hold until the law enforcement investigation is completed.<sup>17</sup>

18. The law enforcement investigation is on hold until the results of the infant’s autopsy are received. Law enforcement has insufficient information to make any probable cause determination at this time.<sup>18</sup>

19. Licensee has been cooperative throughout the investigation.<sup>19</sup>

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<sup>10</sup> *Id.*; Test. of Michelle Marks, day care parent and Certified Nursing Assistant.

<sup>11</sup> Test. of M. Marks.

<sup>12</sup> Test. of Melissa Hernandez, Lead County Social Worker for Child Protection, and Benjamin Mortenson, Investigator for the Albert Lea Police Department.

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

<sup>14</sup> Test. of B. Mortenson.

<sup>15</sup> *Id.*

<sup>16</sup> Test. of M. Hernandez.

<sup>17</sup> *Id.*; Test. of B. Mortenson and S. Heusinkveld.

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

<sup>19</sup> *Id.*

## Additional Findings

20. The infant's mother was of marijuana with intent to sell, and convicted on 4<sup>th</sup> degree possession on January 3, 2012 for an April 14, 2010 offense.<sup>20</sup>

21. The infant's mother's family is known for criminal behavior, including assault.<sup>21</sup>

## Procedural Findings

22. On June 18, 2012, the County licensor recommended that the Department issue an Order of Temporary Immediate Suspension ("TIS") of Licensee's license.<sup>22</sup>

23. On June 18, 2012, the Department issued Licensee a TIS that was hand delivered to Licensee on that date.<sup>23</sup>

24. Following a timely appeal of the TIS by Licensee,<sup>24</sup> the Department issued a Notice of and Order for Hearing on June 21, 2012, scheduling a contested case hearing for July 20, 2012.<sup>25</sup>

25. On July 9, 2012, the ALJ issued a Prehearing Order and Protective Order.

26. On July 13, 2012, the Department filed an Amended Exhibit A to the Notice and Order for hearing, as required by the Prehearing Order and Protective Order.

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 and 245A.08.<sup>26</sup>

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

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<sup>20</sup> Test. of B. Mortenson.

<sup>21</sup> *Id.*; Test. of M. Marks and S. Rechtzigel.

<sup>22</sup> Test. of S. Heusinkveld; Ex. 4.

<sup>23</sup> Ex. 15; Test. of S. Heusinkveld and S. Rechtzigel.

<sup>24</sup> Ex. 2.

<sup>25</sup> Notice and Order for Hearing.

<sup>26</sup> Minnesota Statutes are cited to the 2010 Edition.

3. The purpose of family child care licensure statutes and rules is to ensure that minimum levels of care and service are given and to protect the care, health and safety of children.<sup>27</sup>

### **Temporary Immediate Suspension Standards and Reasonable Cause**

4. Minn. Stat. § 245A.07, subd. 2. provides, in applicable 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.

5. In order to maintain a temporary immediate suspension under Minn. Stat. § 245A.07, subd. 2, the Department must show that reasonable cause exists to believe that Licensee's failure to comply with applicable law or rule or the actions of other individuals, poses a current imminent risk of harm to the health, safety, or rights of persons served by her.

6. "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>28</sup>

7. In its Amended Notice and Order for Hearing, the Department alleged violations of the following three rules:

a. Minn. R. 9502.0365, subp. 5, regarding supervision and the use of substitutes provides:

A licensed provider must be the primary provider of care in the residence. Children in care must be supervised by a caregiver. The use of a substitute caregiver must be limited to a cumulative total of not more than 30 days in any 12-month period.

b. Minn. R. 9502.0315, subp. 29a, regarding supervision provides:

Supervision" means a caregiver being 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

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<sup>27</sup> Minn. Stat. § 245A.07, subd. 1; Minn. R. 9502.0325. Minnesota Rules are cited to the 2011 Edition.

<sup>28</sup> *Id.*

assistance and care so that the child's health and safety is protected

- c. Minn. R. 9502.0395, subp. 2A, regarding standards for behavior guidance provides:

No child shall be subject to corporal punishment or emotional abuse. "Corporal punishment" means the nonaccidental infliction of physical pain on a child by a caregiver. Corporal punishment includes, but is not limited to, rough handling, shoving, hair pulling, ear pulling, shaking, slapping, kicking, biting, pinching, hitting, and spanking. "Emotional abuse" means the infliction of verbal or psychological abuse on a child by a caregiver. Emotional abuse includes, but is not limited to, name calling, ostracism, shaming, derogatory remarks about the child or child's family, and threats which threaten, humiliate, or frighten the child.

8. The Department presented no evidence to suggest that Licensee violated Minn. R. 9502.0365, subp. 5, Minn. R. 9502.0315, subp. 29a, or Minn. R. 9502.0395, subp. 2A.

### **No Reasonable Cause to Continue the Suspension**

9. There are no articulable facts or circumstances at this time that would provide a reasonable, prudent person with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of children served by Licensee.

10. 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.

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

12. 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: August 1, 2012

s/M. Kevin Snell

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M. Kevin Snell

Administrative Law Judge

Reported: Digitally recorded  
No transcript prepared

## 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. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Lucinda Jesson, Commissioner of Human Services, P.O. Box 64998, St. Paul MN 55155, (651) 431-2907 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. 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 Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner 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**

### **Burden of Proof**

At this stage, the County, on behalf of the Department, must demonstrate the existence of circumstances sufficient to warrant a cautious person to reasonably suspect that the Licensee poses an imminent risk of harm to the health, safety or rights of persons 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.

### **Permitted Evidence**

During an expedited hearing regarding a temporary immediate suspension, the Department must 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 reliable hearsay evidence linking the license holder or another individual to an act that puts children at risk of imminent harm. The Department relied on the testimony of the County Licensur, the County Child Protection Investigator and a law enforcement officer. The Department submitted no documentary evidence relevant to the factual issues at issue in this proceeding.

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.

### **Analysis of the Facts in Evidence**

The Department argues that imminent risk of harm exists because Licensee was one of several individuals that had cared for or had access to the infant that died, within the 12 hours prior to his admission to the emergency room. There is no other evidence linking Licensee to the infant's injuries or death.

For the reasons stated below, the ALJ concludes that there is no relevant and reliable evidence in the record to suggest that Licensee currently presents an imminent risk of harm to children. The following factors are listed in reverse order of the weight given them by the Administrative Law Judge.

First, the Licensee testified that the infant was fine when his mother picked him up, and that he had been happy all day – though sleepier than normal.

Second, Licensee's testimony was corroborated by another day care parent – a Certified Nurse Practitioner – who was present at that time.

Third and significantly, there was no testimony from the child's mother to suggest that the infant was not well at the time she picked up the child.

Fourth, there is no autopsy at this time. No one knows the cause of the child's death, let alone who, if anyone, is responsible for his injuries and death. All three of the Department's witnesses base their opinions of the need to continue the TIS on hearsay from the oral statements of doctors and nurses that the infant's injuries could be, or look like, they were caused by shaken baby syndrome. There is no reliable evidence suggesting that Licensee is responsible for the child's injuries. The only reliable evidence is the testimony of the nurse practitioner parent and the Licensee.

Finally, the weight of the credibility determinations favors the testimony of Licensee and the nurse/parent over the hearsay testimony submitted by the Department's witnesses.

### **Necessity of "Imminent Risk of Harm"**

"The standard that the Commissioner [is] required to apply is belief based on reason."<sup>29</sup> The evidence in the record in this case suggests that the standard applied by the Department in issuing the TIS was a belief based on speculation. The fact that Licensee was one of several individuals that had access to the infant in a single period of 12 hours, without more, is insufficient to suspect that Licensee caused his injuries. That is not the type of evidence that reasonable, prudent persons are accustomed to rely on in the conduct of their serious affairs.<sup>30</sup>

The vernacular testimony of the County licenser aptly sums up what is known about the cause of the infant's injuries, "Nobody knows anything at this point."

At the time of the hearing there were no relevant, reliable, and specific articulable facts or circumstances which could provide a cautious and prudent person with a reasonable suspicion that Licensee poses an imminent risk of harm to children in her care.

### **Conclusion**

There are insufficient reliable and relevant articulable facts in the record that would allow a reasonable, prudent person to suspect that Licensee presents an imminent risk of harm to children in her care. Therefore, the ALJ finds that imminent risk of harm is not present and respectfully suggests to the Commissioner that the TIS be immediately rescinded.

**M. K. S.**

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<sup>29</sup> *In Re Strecker*, 777 N.W.2d 41, 46 (Minn. App. 2010).

<sup>30</sup> Minn. R. 1400.7300, Subp. 1.