



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF HEALTH CARE SERVICES

MIKE ZIMMER
DIRECTOR

April 21, 2015

Mr. Daniel Spiegel
5805 West Wackerly St.
Midland, MI 48642

Re: License DG560306316

Dear Mr. Spiegel:

On or about March 23, 2015 you were certified mailed a copy of the Final Decision and Order upholding the Department of Human Services' intention to revoke your license to operate a group child care home. In accordance with that Final Decision and Order, your license is revoked and is now no longer in effect as of April 6, 2015. It is further understood that you will not receive children for care now, or in the future, without being legally licensed to do so.

Sincerely,

Jay Calewartz, Acting Director
Child Care Licensing Division
Licensing & Regulatory Affairs

JC:kam

cc: Jackie Sharkey, Licensing Supervisor
Mary Pat Jennings, Licensing Consultant

CERTIFIED MAIL- Return Receipt Requested

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES

In the matter of

Daniel Spegel,

Petitioner,

V

Bureau of Children and Adult
Licensing,

Respondent.

Docket No. 14-023144-DHS

Agency No. DG 560306316

Agency: Department of
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

RECEIVED

MAR 30 2015

BUREAU OF CHILDREN
AND ADULT LICENSING

Issued and entered
this 23 day of March, 2015
by

Nick Lyon, Interim Director
Department of Human Services

FINAL DECISION AND ORDER

This matter began with Respondent's July 22, 2014 Notice of Intent to Revoke License (notice of intent) regarding Petitioner's license to operate a group child care home under the Child Care Organizations Act (Act), 1973 PA 116, as amended, MCL 722.111 *et seq.* A properly noticed hearing regarding the matter at issue was held by Administrative Law Judge Robert H. Mourning (ALJ) on December 17, 2014. Attorney W. Jay Brown represented Petitioner. Assistant Attorney General Kristin M. Heyse represented Respondent.

Respondent sought to revoke Petitioner's license based on allegations in the notice of intent that Petitioner violated the Act, as well as administrative rules

promulgated under the Act. In Count I of the notice of intent, Respondent alleged that Petitioner violated R 400.1911, which states in relevant part:

The caregiver shall assure appropriate care and supervision of children at all times. [Rule 400.1911 (1)]

On May 5, 2014, Rebecca Sanders, the parent of Child A, instructed Jill Martin to pick up Child A from Petitioner's child care home. On this day, Ms. Sanders picked up her child and did not inform Ms. Martin. Ms. Martin arrived at Petitioner's day care home and Petitioner released the only remaining child (Child B) in care. Ms. Martin took Child B to Ms. Sanders' home and then realized Child B was not Ms. Sanders' child. Child B remained with Ms. Martin for approximately 30-40 minutes. During this time, Child B's father arrived at the child care home to pick up Child B and Child B was not present due to Petitioner wrongfully releasing Child B to Ms. Martin.

Petitioner failed to assure the appropriate care and supervision of the children placed in his care when he released Child B to Ms. Martin without verifying her identity, whether she was authorized to pick up Child B, and by releasing Child B to a stranger. Therefore, the ALJ properly determined Petitioner willfully and substantially violated of Rule 400.1911 (1).

In Count II of the notice of intent, Respondent alleged that Petitioner violated R 400.1903, which states in pertinent part:

The caregiver shall assure that a child is released only to persons authorized by the parent. [Rule 400.1903 (2)]

The record established a child attending Petitioner's child care home was wrongfully released to an individual not authorized. Petitioner assumed because Child B was the only child left that it must be the child Ms. Martin was picking up. Child B's

information card (Respondent's Exhibit A, pages 7-8) did not provide Ms. Martin with the authority to have Child B released to her. Therefore, the ALJ properly determined Petitioner willfully and substantially violated Rule 400.1903 (2).

In Count III of the notice of intent, Respondent alleged that Petitioner violated R 400.1911, which states in pertinent part:

Caregiving staff shall know the location of each child at all times. [Rule 400.1911 (4)]

On May 5, 2014, Ms. Martin arrived at Petitioner's child care home location to pick up Child A, but Petitioner released Child B to Ms. Martin not Child A. Petitioner never verified Ms. Martin's identity and based on the information, Petitioner failed to know the identity of Child A and Child B. Petitioner failed to know the location of Child A when he released Child B to an unauthorized person. When Child B's father arrived to pick up his child, Child B was not present. Therefore, the ALJ properly determined Petitioner willfully and substantially violated Rule 400.1911 (4).

Petitioner filed exceptions. Petitioner's exceptions allege that his prior 2011 and 2012 violations of Rule 400.1911 (1) should not be considered in demonstrating his substantial and willful violation of Rule 400.1911 in the instant case; because said violations were resolved through a Corrective Action Plan (CAP), I disagree. The fact that Petitioner submitted acceptable CAPs demonstrates Petitioner's acknowledgement of the rule violation and his requirement to comply with Rule 400.1911 (1) (Respondent's Exhibit C and Exhibit D). Pursuant to the Administrative Procedures Act of 1969, MCL 24.275, it states, "...an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men [sic] in the

conduct of their affairs. . . .” Therefore, Respondent’s Special Investigation Reports referencing Petitioner’s violations in 2011 and 2012 were properly admitted to the record to demonstrate Petitioner’s knowledge of non-compliance with Rule 400.1911 (1); that further supports his willful and substantial (Rule 400.16001 (1)(d) & (e)) violation of Rule 400.1911 (1). A licensee providing child care should know that assuring the appropriate care and supervision of a child is a fundamental requirement. Petitioner’s assertion that he had no way of knowing that this was a requirement is without merit. The record established sufficient evidence to support the ALJ’s finding that Petitioner substantially and willfully violated Rule 400.1911 (1).

Furthermore, Petitioner’s exceptions allege that he did not know nor have reason to know his actions violated any specific administrative rule or provision of the Act. I disagree with this contention as well. At the time of application for licensure of a group child care home, an applicant acknowledges several conditions for licensure that includes their compliance with the Child Organization Act and promulgated rules. As stated in Respondent’s response to Petitioner’s exceptions, Petitioner agreed to comply with the Act and the rules promulgated under the Act during the renewal of his license. Therefore, Petitioner did know and had reason to know the requirements for licensure.

Per exceptions, Petitioner alleges that Respondent did not identify any threat of harm to Child B. The fact that Child B was safely returned to Petitioner’s home, does not negate the fact that an unauthorized individual improperly removed a child from Petitioner’s child care home and that Petitioner did not know the identity of the child being released nor the identity of the person to whom he was releasing said child. The

record indicated Petitioner failed to confirm her identity as an authorized person to whom Child B could be released.

On January 14, 2015, the ALJ properly issued and entered a Proposal for Decision (PFD) that concluded Petitioner had willfully and substantially violated Rule 400.1911 (1); Rule 400.1903 (2); and Rule 400.1911 (4). Parties had 14 days to file exceptions and 14 days to file responses to any exceptions. Petitioner filed exceptions and Respondent filed a response to said exceptions.

Upon review and to the extent not inconsistent with this Order, I agree with the ALJ's findings of fact and conclusions of law in this case.

ORDER

NOW THEREFORE, IT IS ORDERED that:

1. To the extent not inconsistent with this Order, the ALJ's Proposal for Decision (PFD) is adopted and is incorporated by reference, and made a part of this Final Decision and Order (see attached PFD).
2. The actions of the Bureau of Children and Adult Licensing in this matter are AFFIRMED.
3. Petitioner's license is REVOKED effective on the date this Final Decision and Order is issued and entered.



Nick Lyon, Interim Director
Department of Human Services

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 26 day of March, 2015.



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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 14-023144-DHS

Daniel Spegel,
Petitioner

Case No.: DG 560306316

v

Agency: Department of
Human Services

Bureau of Children and Adult Licensing,
Respondent

Case Type: DHS BCAL

Filing Type: Sanction
Revocation

Issued and entered
this 14th day of January 2015
by Robert H. Mourning
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This proceeding was commenced with Daniel Spegel (Petitioner) filing an appeal from a Notice of Intent to Revoke License (Notice of Intent) to operate a group child care home on a license issued by the Bureau of Children and Adult Licensing (Respondent).

On September 18, 2014, a Notice of Hearing was mailed, scheduling a hearing for October 20, 2014 beginning at 9:00 a.m., at the Michigan Administrative Hearing System, Ottawa State Office Building, 2nd Floor, 611 West Ottawa Street, Lansing, Michigan.

On October 15, 2014, the Respondent requested an adjournment of the hearing scheduled for October 20, 2014. On October 15, 2014, an Order Granting Adjournment was issued, rescheduling the hearing date to December 17, 2014.

A hearing was held on December 17, 2014. Attorney W. Jay Brown appeared on behalf of the Petitioner at the hearing. Assistant Attorney General Kristin M. Heyse appeared on behalf of the Respondent.

The Petitioner testified on his own behalf. Jill Martin and Mary Pat Jennings testified for the Respondent. In addition, the Respondent offered the following exhibits, which were admitted into evidence:

- Exhibit A: Special Investigation Report, 5/30/14.
Exhibit B: Special Investigation Report, 4/5/12.
Exhibit C: Special Investigation Report, 1/13/11.
Exhibit D: Notice of Intent, 7/22/14.

ISSUES AND APPLICABLE LAW

The general issue is whether the Petitioner violated the Child Care Organizations Act (Act), 1973 PA 116, as amended, MCL 722.111 *et seq* and its administrative rules. The specific issues are whether the Respondent violated 2009 AACR, R 400.1903(2), 2009 AACR, R 400.1911(1), and 2009 AACR, R 400.1911(4).

R 400.1903 provides:

Rule 3.

(1) A caregiver shall be responsible for all of the following provisions:

(a) Be present in the home on a daily basis and provide direct care and supervision for the majority of time children are in care, except for any of the following circumstances:

(i) When the child care home is in operation, vacation or personal leave shall not exceed 20 days within a calendar year.

(ii) Medical treatment and subsequent recovery.

(b) The exceptions in subrule (1)(a) of this rule do not include other part-time or full-time employment that occurs during the hours of operation of the child care home.

(c) Provide an adult assistant caregiver with valid CPR and first aid to act as the caregiver when the caregiver is unable or unavailable to provide direct care.

(d) Shall inform parents when an assistant caregiver is providing care in the absence of the caregiver.

(e) Maintain a record of the dates of caregiver absences. These records shall be maintained for a minimum of 4 years.

(f) Have a written and signed agreement with a responsible person who is 18 years of age or older to provide care and supervision for children during an emergency situation.

(g) Post the current license or certificate of registration in a conspicuous place.

(h) Report to the department, within 7 working days, any changes in the household composition or when any new or existing member of the household has any of the following:

(i) Arrests or convictions.

(ii) Involvement in substantiated abuse or neglect of children.

(iii) Court-supervised parole or probation of the caregiver or any member of the household.

(iv) Been admitted to, or released from, a correctional facility, or hospital, institution, or facility for the treatment of an emotional, mental, or substance abuse problem.

(i) Provide the department with a written statement verifying a person's personal fitness to care for, or to be associated with, children for any person who lives in a home or who cares for children and who has been treated on an inpatient or outpatient basis for an emotional, mental, or substance abuse problem during the last 2 years. Such statement shall be obtained from the medical or mental health professional who is directly involved in the treatment plan or the administrative director of the mental hospital or mental institution.

(j) Shall immediately report to children's protective services any suspected child abuse or neglect.

(2) The caregiver shall assure that a child is released only to persons authorized by the parent.

(3) The caregiver shall permit parents of enrolled children to visit anytime during hours of operation.

(4) The caregiver shall cooperate with the department in connection with an inspection or investigation. Cooperation shall include, but not be limited to, both of the following:

(a) To enable the department to conduct a thorough investigation, provide access to the assistant caregivers, all records, and materials.

(b) Information provided to the department shall be accurate and truthful.

(5) The caregiver shall assure that all assistant caregivers shall be of good moral character and be suitable to assure the welfare of children.

(6) The caregiver shall have present at all times at least 1 person who can accurately comprehend all of the following information:

(a) In child care home rules, 1973 PA 116, MCL 722.111, and any additional licensing division communications.

(b) On child information cards.

(c) In written directions about the child's care.

(d) On food, cleaning, and chemical labels that can impact a child's well-being.

(e) On written medication directions for any given child.

- (f) Needed to effectively implement emergency procedures.
- (7) The caregiver shall authorize the department to conduct a criminal history and protective service background check to assess the good moral character and suitability of the child care home family.
- (8) The caregiver shall do both of the following:
 - (a) Assure that smoking does not occur in the child care home and on the premises while children are in care.
 - (b) Conspicuously post on the premises a notice stating that smoking is prohibited on the premises during child care hours.
- (9) The caregiver shall notify parents if smoking occurs in the child care home and on the premises when children are not in care.

R 400.1911 provides:

Rule 11.

- (1) The caregiver shall assure appropriate care and supervision of children at all times.
- (2) A caregiver or adult assistant caregiver shall be present in the home at all times when children are in care.
- (3) Caregiving staff shall be up and awake at all times when children are in care except as provided in R 400.1922(2) of these rules.
- (4) Caregiving staff shall know the location of each child at all times.
- (5) Caregiving staff shall never leave a child unattended or with a minor in a vehicle.
- (6) A caregiver or adult assistant caregiver shall at all times directly supervise children who are engaged in water activities or are near collections or bodies of water.

FINDINGS OF FACT

1. On or about February 19, 2010, the Petitioner (herein called "Licensee") was issued a license to operate a group child care home with a current capacity of 12 children at 5805 W. Wackerly Street, Midland, Michigan.
2. On January 13, 2011, Marcia Demski, a licensing consultant, completed Special Investigation Report (SIR) #2010D0655026 and cited the Licensee with three licensing rule violations, including Rule 400.1911(1). A child care child was missing a large section of hair from the top, back section of his head, and a clump of hair was found on the floor on the child care room. The caregivers were unaware that a hair pulling incident had occurred. As a

result of this investigation, the Licensee submitted an acceptable corrective action plan (CAP) to show compliance with the cited licensing rule violations.

3. On April 5, 2012, Mary Pat Jennings, a licensing consultant, completed SIR #2012D0606009 and cited the Licensee with two licensing rule violations, including Rule 400.1911(1). A child care child had wandered away from the children's bathroom without staff noticing. The child wandered to another part of the child care home and saw the Licensee's penis when she entered the bathroom the Licensee was using due to the Licensee's failure to close the door. As a result of this investigation the Licensee submitted an acceptable CAP to show compliance with the cited licensing rule violations.
4. On May 5, 2014, Rebecca Sanders asked Jill Martin to pick up Child A from the Licensee's home at 6:30 p.m. However, Ms. Sanders picked up Child A at approximately 4:00 p.m. and she forgot to inform Ms. Martin. When Ms. Martin arrived at the Licensee's home to pick up Child A, the only child in the home was Child B, who the Licensee released to Ms. Martin without verifying the child's identification or Ms. Martin's identification.
5. Ms. Martin transported Child B to Ms. Sanders' home. Ms. Sanders realized that it was not her child. She had Child B in her care for approximately 30 to 40 minutes before realizing she had the wrong child. When Ms. Martin and Ms. Sanders returned Child B to the Licensee's home, Nolan Taglauer, Child B's father, was already there, waiting to take Child B home.
6. On May 15, 2014, Ms. Jennings made an on-site visit to the Licensee's home. The Licensee informed Ms. Jennings that, when Ms. Martin arrived to pick up Child A, he assumed she was there to pick up Child B because that was the only child left in his care. Ms. Jennings reviewed the child information records for Child A and the record did not list Ms. Martin as an individual who has permission to pick him up from the child care home.
7. On May 16, 2014, Ms. Jennings spoke with Mr. Taglauer. When Mr. Taglauer arrived at the Licensee's home and discovered that Child B was gone, he noticed that the Licensee seemed confused. Mr. Taglauer told Ms. Jennings that the first time he picked Child B up from the Licensee's home he "thought it was kind of weird because [Licensee] didn't ask who I was. He took my word for it that I was his father."

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. The burden of proof is upon the Respondent to prove, by a preponderance of the evidence, that grounds exist for the imposition of sanctions upon the Petitioner.

1999 AACS, R 400.16001(d) and (e) provides definitions for substantial noncompliance and willful noncompliance as used in 1973 PA 116, as amended:

(d) 'Substantial noncompliance' means repeated violations of the act or act 218 or any administrative rule promulgated under the act or act 218, or noncompliance with the act or act 218, or a rule promulgated under the act or act 218, or the terms of a license or a certificate of registration that jeopardizes the health, safety, care, treatment, maintenance, or supervision of individuals receiving services or, in the case of an applicant, individuals who may receive services.

(e) 'Willful noncompliance' means, after receiving a copy of the act or act 218, the rules promulgated under the act or act 218 and, for a license, a copy of the terms of a license or a certificate of registration, an applicant or licensee knew or had reason to know that his or her conduct was a violation of the act or act 218, rules promulgated under the act or act 218, or the terms of a license or certificate of registration.

Count I-Rule 400.1911(1)

By this charge, the Respondent asserts that the Licensee, as a caregiver, did not assure appropriate care and supervision of Child B at all times. There is substantial evidence in the record that Child B was released to a stranger, Ms. Martin. Fortunately, Ms. Martin and Ms. Sanders were responsible adults and returned Child B to Mr. Taglauer.

Accordingly, the Licensee has willfully and substantially violated Rule 400.1911(1).

Count II-Rule 400.1903(2)

By this charge, the Respondent asserts that the Licensee, as a caregiver, failed to assure that that a child was released only to a person authorized by a parent. There is no evidence in the record that Mr. Taglauer ever authorized the Licensee either orally or in writing to release Child B to Ms. Martin. Moreover, before turning Child B over to Ms. Martin, the Licensee failed to ask for identification from Ms. Martin and failed to verify the identification of Child B.

Accordingly, the Licensee has willfully and substantially violated Rule 400.1903(2).

Count III-Rule 400.1911(4)

By this charge, the Respondent asserts that the Licensee, as a caregiver, did not know the location of Child B at all times. There is substantial evidence in the record that the Licensee did not know the location of Child B for a period of time. In fact, for a period of

time, the Licensee did not realize that he had released Child B to the wrong adult.

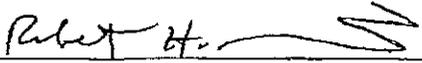
Accordingly, the Licensee has willfully and substantially violated Rule 400.1911(4).

PROPOSED DECISION

It is proposed that the Director of the Department of Human Services finds and concludes that the Licensee has willfully and substantially violated Rule 400.1911(1) and (4) and Rule 400.1903(2).

EXCEPTIONS

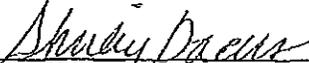
If a party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within fourteen (14) days after the Proposal for Decision is issued and entered. If an opposing party chooses to file a Response to the Exceptions, it must be filed within fourteen (14) days after Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the Michigan Administrative Hearing System, P.O. Box 30695, Lansing, Michigan 48909-8195, and served on all parties to the proceeding.



Robert H. Mourning
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 14th day of January 2015.


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