



RICK SNYDER
GOVERNOR

State of Michigan
DEPARTMENT OF HUMAN SERVICES
BUREAU OF CHILDREN AND ADULT LICENSING



MAURA D. CORRIGAN
DIRECTOR

June 11, 2014

Kikiwa Gambles
1416 Andrea Street
Ypsilanti, MI 48198

RE: Docket # 13-007165-DHS
License # DC810315522

Dear Kikiwa Gambles:

On May 28, 2014 you were mailed a copy of the FINAL DECISION AND ORDER upholding the Agency's Notice of Intent to Refuse to Renew your license to operate a child care center. In accordance with that notice your license has been revoked effective June 10, 2014. It is further expected that you not receive children for care now or in the future without being licensed.

Sincerely,

Jerry Hendrick, Acting Director
Child Care Licensing Division
Bureau of Children and Adult Licensing

JH:em

cc: Ailene Buchtrup, Area Manager

Kelly

RECEIVED

JUN 03 2014

BUREAU OF CHILDREN
AND ADULT LICENSING

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES

In the matter of

Kikiwa Gambles, De-Kidzone,
Petitioner,

v

Bureau of Children and Adult
Licensing,

Respondent.

Docket No. 13-007165-DHS

Case No. DC 810315522

Agency: DHS

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 28 day of May, 2014
by
Maura D. Corrigan, Director
Department of Human Services

FINAL DECISION AND ORDER

This matter began with Respondent's May 15, 2013 notice of intent to refuse to renew license (notice of intent) regarding Petitioner's license to operate a child care center under the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111 *et seq.* A properly noticed hearing conducted on January 14, 2014 by Administrative Law Judge Christopher S. Saunders (ALJ). Petitioner appeared on her own behalf. Departmental Analyst Kelly Maltby represented the Respondent.

Respondent seeks to refuse the renewal of Petitioner's license based on allegations in the notice of intent that Petitioner violated the Act and administrative rules promulgated under the Act. Respondent alleged in Count I of the notice of intent that Petitioners' conduct violated R 400.5103 which states in pertinent part as follows:

* * *

A program director shall be present at the following:

At least 50% of the time children are in care, but not less than a total of 6 hours for programs operating 6 or more continuous hours. [Rule 400.5103 (1)(b).]

* * *

Petitioner did not dispute the fact that Ms. Jacyntha Matthews, the child care center's program director, was not present at the center at least 50% of the time children were in care. The record indicated Petitioner was cited for the same violation during a 2012 inspection. Furthermore, Petitioner further admitted she was in the process of finding a full-time program director. Therefore, the ALJ determined that Respondent sufficiently demonstrated Petitioner's willful and substantial violation of Rule 400.5103 (1)(b).

Respondent also alleged in Count II of the notice of intent that Petitioner violated R 400.5102, which states in pertinent part as follows:

* * *

The licensee shall have the following administrative responsibilities regarding staff:

Perform a criminal history check using the Michigan department of state police's internet criminal history access tool (ICHAT) before making an offer of employment to a person. [Rule 400.5102(2)(b).]

Note: All staff shall be of responsible character and suitable to meet the needs of children. [Rule 400.5104]

* * *

During the April 2013 inspection, Petitioner was unable to provide a record demonstrating that an ICHAT check had been conducted for every caregiver employed

at the center. On or about July 20, 2013 during a follow-up inspection, Respondent noted that Petitioner was not present at the center and the staff available during that inspection could not access records to verify that an ICHAT check had been conducted. As a result thereof, Petitioner failed to demonstrate compliance with the required criminal history check. Therefore, the ALJ concluded that Respondent had shown by a preponderance of the evidence that Petitioner willfully and substantially violated Rule 400.5102 (2)(b).

Respondent further alleged in Count III of the Notice that Petitioner violated R 400.5102a, which states in pertinent part as follows:

At least 1 caregiver with current certification in infant, child, and adult CPR and current first aid certification shall be on duty in the center at all times. [Rule 400.5102a(1).]

The ALJ determined that Petitioner failed to assure that all lead caregivers were certified in CPR and first aid training. On April 10, 2013, during the renewal inspection of Petitioner's child care center, Respondent observed one caregiver on duty who did not have a CPR or a first aid certification on file. While Petitioner produced an invoice for the amount charged for the CPR and first aid training, there was no evidence to verify training was actually completed by Petitioner's staff. Therefore, the ALJ determined that Respondent did show by a preponderance of the evidence that Petitioner willfully and substantially violated R 400.5102a (1).

In Count IV of the Notice, Respondent alleged that Petitioner violated R 400.5104, which states in pertinent part:

A staff member shall provide the child care center with documentation from the Department of Human Services that he or she has not been named in a central registry

case as the perpetrator of child abuse or child neglect before having contact with a child in care. [Rule 400.5104(3).]

Petitioner failed to conduct and to maintain Central Registry clearances on file for employed caregivers at the child care center. While Petitioner did produce one Central Registry check for one staff member, the record indicated no other clearances were conducted for the remaining staff. Therefore, the ALJ determined that Respondent did show by a preponderance of the evidence that Petitioner willfully and substantially violated R 400.5104 (3).

In Count V of the Notice, Respondent alleged that Petitioner violated R 400.5105, which states in pertinent part:

The center shall provide appropriate care and supervision of children at all times. [R 400.5105 (1)]

During the April 2013 renewal inspection, Petitioner failed to adequately schedule and maintain the required staff to child ratio. Also, Petitioner's failure to employ caregivers with the required first aid training and maintain the required criminal background checks supported the ALJ's determination that Petitioner failed to provide appropriate care and supervision of the children placed in her care. Therefore, the ALJ properly concluded that Respondent demonstrated by a preponderance of the evidence Petitioner willfully and substantially violated R 400.5105(1).

In Count VI of the Notice, Respondent alleged that Petitioner violated R 400.5111 which states in pertinent part:

At the time of the child's initial attendance, a child information card, using a form provided by the department or a comparable substitute, filled out by the parent, to seek emergency medical care shall be obtained and kept on file

and accessible in the center.

* * *

(3) At the time of initial attendance, 1 of the following shall be obtained and kept on file and accessible in the center:

(a) A certificate of immunization showing a minimum of 1 dose of each immunizing agent specified by the Department of Community Health.

(b) A copy of a waiver addressed to the Department of Community Health and signed by the parent stating immunizations are not being administered due to religious, medical, or other reasons.

(4) When a child has been in attendance for 4 months, an updated certificate showing completion of all additional immunization requirements as specified by the Department of Community Health shall be on file unless there is a signed statement by a licensed physician or his or her designee stating immunizations are in progress.

(5) Within 30 days of initial attendance, 1 of the following shall be obtained and kept on file and accessible in the center:

(a) For infants and young toddlers: A physical evaluation performed within the preceding 3 months signed by a licensed physician or his or her designee. Any restrictions shall be noted.

(b) For older toddlers and pre-school age: A physical evaluation performed within the preceding year signed by a licensed physician or his or her designee. Any restrictions shall be noted.

* * *

(8) The center shall maintain an accurate record of daily attendance at the center that includes each child's first and last name, and each child's arrival and departure time. [Rule 400.5111(1), (3)(a)(b)(c), (4), (5)(a)(b), and (8).]

* * *

Petitioner failed to maintain the required records for the daily operation and safe supervision of the children placed in Petitioner's day care home. During the April 2013 inspection, Respondent observed several children in attendance with missing information cards, immunization records, and other vital information. In addition, Petitioner failed to properly document children's attendance and caregiver assignments. Therefore, the ALJ properly concluded that Respondent demonstrated by a preponderance of the evidence Petitioner willfully and substantially violated R 400.5111(1), (3)(a)(b), (4), (5)(a)(b), and (8).

In Count VII of the Notice, Respondent alleged that Petitioner violated R 400.5201a, which states in pertinent part:

- (1) At least 2 staff members, 1 of whom is a caregiver, shall be present at all times when at least 3 children between the ages of birth and 3 years of age are present:
- (2) The ration of caregivers to children present at all times shall be based on the following provisions:
 - (a) For infants and young toddlers, 0-29 months, there shall be 1 caregiver for 4 children or each fraction of 4, including children who are related to the staff and the licensee. [Rule 400.5201a (1) & (2)(a)]

Petitioner's day care center was not compliant with the required staff to child ratio. Petitioner admitted on the record that the staff to child ratio was out of compliance due to unexpected staff absences. Regardless, the supervision and safety of the children during that period was compromised as the result of improper staffing. Therefore, the ALJ properly concluded that Respondent demonstrated by a preponderance of the evidence Petitioner willfully and substantially violated R 400.5201a (1) and (2)(a).

In Count VIII of the Notice, Respondent alleged that Petitioner violated R 400.5940, which states in pertinent part:

The premises shall be maintained in a clean and safe condition. [R 400.5940 (1)]

Petitioner failed to maintain the facility in a clean and safe condition. During the April 2013 inspection, Respondent identified a bottle of medication not properly secured stored and readily accessible children. The feeding containers were not properly labeled; a bottle of milk was observed sitting out, unrefrigerated and was not properly disposed. Caregivers failed to have children wash their hands before meals.

In addition, cleaning supplies were not properly secured and readily accessible to children. Petitioner did not present evidence to refute the allegations contained in Count VIII. Petitioner's non-compliance constituted a health and safety risk to the children placed in Petitioner's care. Therefore, the ALJ properly concluded that Respondent demonstrated by a preponderance of the evidence Petitioner willfully and substantially violated R 400.5904 (1).

In Count IX of the Notice, Respondent alleged that Petitioner violated R 400.5102, which states in pertinent part:

The licensee shall do all of the following:

* * *

Be responsible for compliance with 1973 PA 116, MCL 722.11 and the rules promulgated under the act. [R 400.5102 (1)(c)]

The record indicated Petitioner defrauded the Michigan Department of Human Services by submitting billing statements through its Child Development and Care

(CDC) Program for payment of services rendered to children who were not present at Petitioner's day care during the hours identified in those billing statements. Petitioner's conduct demonstrated she is not of good moral character and not suitable to meet the needs of the children placed in her care. Therefore, the ALJ properly concluded that Respondent demonstrated by a preponderance of the evidence Petitioner willfully and substantially violated R 400.5201 (1)(c).

On February 13, 2014, the ALJ issued and entered a Proposal for Decision (PFD) concluding that Petitioner had willfully and substantially violated Rule 400.5103 (1)(b); Rule 400.5102 (2)(b); Rule 400.5102a (1); Rule 400.5104 (3); Rule 400.5105 (1); Rule 400.5111(1), (3)(a)(b), (4), (5)(a)(b), and (8); Rule 400.5201a(1), (2)(a); Rule 400.5940 (1); and Rule 400.5102 (1)(c). The parties had 14 days to file exceptions and 14 days to file responses to any exceptions. On March 4, 2013, Petitioner filed untimely exceptions to the PFD. No response was filed by Respondent.

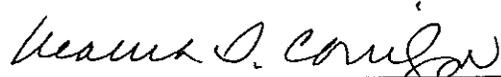
Upon review, I agree with the ALJ's findings of fact and conclusions of law in this case.

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.

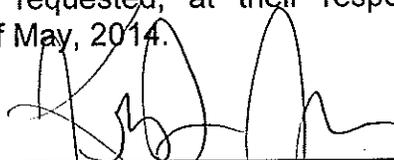
3. Petitioner's license renewal is REFUSED effective on the date this Final Decision and Order is issued and entered.



Maura D. Corrigan, 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 30 day of May, 2014.



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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Kikiwa Gambles, De-Kidzone,
Petitioner

v

Bureau of Children and Adult Licensing,
Respondent

Docket No.: 13-007165-DHS

Case No.: DC 810315522

Agency: Department of
Human Services

Case Type: DHS BCAL

Filing Type: Sanction

Issued and entered
this 13th day of February, 2014
by: Christopher S. Saunders
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

On May 15, 2013, the Bureau of Children and Adult Licensing (BCAL/Respondent) issued a Notice of Intent to Refuse to Renew License regarding the license of Kikiwa Gambles (Petitioner) to operate a child care center pursuant to BCAL's authority under the Child Care Organizations Act, 1973 PA 116 (Act 116), as amended, MCL 722.111 *et seq.* On June 20, 2013, Petitioner filed a request for hearing.

On July 26, 2013, a Notice of Hearing was issued scheduling a hearing for September 18, 2013 at 9 a.m. in Lansing, Michigan. Attorney Paula Aylward filed an appearance on behalf of Petitioner and on September 12, 2013, filed a request for adjournment. On September 18, 2013, an order granting adjournment was issued, scheduling a hearing for November 20, 2013. On October 1, 2013, Assistant Attorney General Joshua Smith filed an appearance on behalf of Respondent.

On October 28, 2013, Respondent filed an Amended Notice of Intent to Refuse to Renew License. On November 5, 2013, Petitioner's counsel requested an adjournment of the November 20, 2013 hearing date. On November 19, 2013, an Order Granting Adjournment was issued, scheduling the hearing for January 14, 2013. On December 19, 2013, the Michigan Administrative Hearing System (MAHS) received a Stipulation Concerning Request to Withdraw as Counsel for Petitioner. On December 18, 2013, an Order Granting Motion to Withdraw as Counsel for Petitioner was signed by Administrative Law Judge (ALJ) Richard Lacasse. Based on the

withdrawal of Petitioner's attorney, Attorney Joshua Smith withdrew his representation of Respondent on January 10, 2014.

On January 8, 2014, Petitioner submitted a request for adjournment of the January 14, 2014 hearing date. On January 10, 2014, Respondent filed a Response in Opposition to Petitioner's Request for Adjournment. Petitioner's January 8, 2014 request for adjournment was denied by the undersigned ALJ.

The hearing proceeded as scheduled on January 14, 2014. Petitioner, Kikiwa Gambles appeared on her own behalf. Kelly Maltby, Departmental Analyst, appeared on behalf of Respondent.

WITNESSES

The following witnesses provided testimony on behalf of Petitioner:

1. Kikiwa Gambles, Petitioner

The following witnesses provided testimony on behalf of Respondent:

1. Thanh Biehl, Child Care Licensing Consultant
2. Jessica Mitchell, Senior Agent, Office of Inspector General

EXHIBITS

The following exhibits were offered into evidence by Petitioner and admitted:

1. Exhibit A: Invoice for CPR/FA training billed to De-Kidzone, dated May 4, 2013.
2. Exhibit B: Staff Inservice Documentation form dated 6/12/2013.
3. Exhibits C2-7: Medical Clearance Request form for Shadonna Lewis, dated 7/15/2013; Central Registry check for Shadonna Lewis, dated 8/13/2013; ICHAT search for Shadonna Lewis, dated 7/18/2013; and transcripts for Shadonna Lewis.
4. Exhibit D: Receipt of Notification form created by Petitioner.
5. Exhibit E: Field Trip Permissions form created by Petitioner.
6. Exhibit F: Michigan Department of Human Services CDC Daily Time and Attendance Record form.
7. Exhibit J: Support letter for Petitioner.
8. Exhibit K: Support letter for Petitioner.
9. Exhibit L: Support letter for Petitioner.
10. Exhibit M: Support letter for Petitioner.
11. Exhibit N: Photograph of the entranceway of Petitioner's day care center.
12. Exhibit O: Photograph of licensing notebook and staff shift log at Petitioner's day care center.

13. Exhibit P: Photograph of play room at Petitioner's day care center.
14. Exhibit Q: Photograph of play room at Petitioner's day care center.
15. Exhibit R: Photograph of play room at Petitioner's day care center.
16. Exhibit T: Photograph of changing table at Petitioner's day care center.
17. Exhibit U: Photograph of soapy water, plain water, and sanitizer bottles at Petitioner's day care center.
18. Exhibit X: Photograph of labeled bottles from Petitioner's day care center.
19. Exhibit AA: Photograph of kitchen area at Petitioner's day care center.

The following exhibits were not admitted into evidence based on sustained objections due to relevance:

Exhibits C1, G, H, I, S, V, W, Y, Z, AB, AC, AD, and AE were all excluded based on relevancy.

The following exhibits were offered into evidence by Respondent and admitted:

1. Exhibit 1: Licensing report regarding Petitioner's day care center (De-Kidzone) dated April 17, 2013.
2. Exhibit 2: Photograph of attendance record from April 10, 2013.
3. Exhibit 3: Special Investigation Report, dated 3/1/2013 and Corrective Action Plan signed by Petitioner on 3/5/2013.
4. Exhibit 4: Letter sent to Petitioner regarding follow up to the on-site inspection conducted on 7/8/2013, dated September 16, 2013.
5. Exhibit 5: Child Care Application signed by Petitioner and dated 3/18/2013.
6. Exhibit 6: Office of Inspector General Special Investigation Report, dated 9/6/2013.
7. Exhibit 7: Office of Inspector General Supplemental Report, dated 11/18/2013.
8. Exhibit 8: Office of Inspector General Supplemental Report pertaining to text messages sent by Petitioner.
9. Exhibit 9: Letter sent by Petitioner to Respondent in response to the Notice of Intent to Refuse to Renew License, signed by Petitioner, and dated 6/10/2013.

ISSUES AND APPLICABLE LAW

The issue in this matter is whether Petitioner violated the following rules as cited in the October 28, 2013 Amended Notice of Intent to Refuse to Renew License:

R 400.5103 Program director qualifications;
responsibilities.

- (1) A program director shall be present at the following:

- (b) At least 50% of the time children are in care, but not less than a total of 6 hours for programs operating 6 or more continuous hours.

R 400.5102 Licensee.

- (2) The licensee shall have the following administrative responsibilities regarding staff:

- (b) Perform a criminal history check using the Michigan Department of State Police's internet criminal history access tool (ICHAT) before making an offer of employment to a person.

R 400.5102a Staff training requirements.

Rule 102a. (1) At least 1 caregiver with current certification in infant, child, and adult CPR and current first aid certification shall be on duty in the center at all times.

R 400.5104 Staff.

- (3) A staff member shall provide the child care center with documentation from the Department of Human Services that he or she has not been named in a central registry case as the perpetrator of child abuse or child neglect before having contact with a child in care.

R 400.5105 Supervision and ratio requirements.

Rule 105. (1) The center shall provide appropriate care and supervision of children at all times.

R 400.5111 Children's records.

Rule 111. (1) At the time of the child's initial attendance, a child information card, using a form provided by the department or a comparable substitute, filled out by the parent, including written permission, signed by the parent, to seek emergency medical care shall be obtained and kept on file and accessible in the center.

- (3) At the time of initial attendance, 1 of the following shall be obtained and kept on file and accessible in the center:
 - (a) A certificate of immunization showing a minimum of 1 dose of each immunizing agent specified by the Department of Community Health.
 - (b) A copy of a waiver addressed to the Department of Community Health and signed by the parent stating immunizations are not being administered due to religious, medical, or other reasons.
- (4) When a child has been in attendance for 4 months, an updated certificate showing completion of all additional immunization requirements as specified by the department of community health shall be on file unless there is a signed statement by a licensed physician or his or her designee stating immunizations are in progress.
- (5) Within 30 days of initial attendance, 1 of the following shall be obtained and kept on file and accessible in the center:
 - (a) For infants and young toddlers: A physical evaluation performed within the preceding 3 months signed by a licensed physician or his or her designee. Restrictions shall be noted.
 - (b) For older toddlers and pre-school age: A physical evaluation performed within the preceding year signed by a licensed physician or his or her designee. Any restrictions shall be noted.

- (8) The center shall maintain an accurate record of daily attendance at the center that includes each child's first and last name, and each child's arrival and departure time.

R 400.5201a Ratio of caregivers to infants/young toddlers/older toddlers.

Rule 201a. (1) At least 2 staff members, 1 of whom is a caregiver, shall be present at all times when at least 3 children between the ages of birth and 3 years of age are present.

- (2) The ratio of caregivers to children present at all times shall be based on the following provisions:
 - (a) For infants and young toddlers, 0 to 29 months, there shall be 1 caregiver for 4 children or each fraction of 4, including children who are related to the staff and the licensee.
 - (b) For older toddlers, 30 to 35 months, there shall be 1 caregiver for 8 children or each fraction of 8, including children who are related to the staff and the licensee.

- (3) If there are children of mixed ages in the same room or in a well-defined space, then the ratio shall be determined by the age of the youngest child.

R 400.5940 Maintenance of premises.

Rule 940. (1) The premises shall be maintained in a clean and safe condition.

R 400.5102 Licensee.

- Rule 102. (1) The licensee shall do all of the following:
- (a) Demonstrate to the department that he or she is of good moral character as defined in 1974 PA 381, MCL 338.41 to 338.47, and is suitable to meet the needs of children.

- (c) Be responsible for compliance with 1973 PA 116, MCL 722.111 and the rules promulgated under the act.

FINDINGS OF FACT

1. On or about September 30, 2012, Petitioner was issued a license to operate a child care center, with a licensed capacity of 20, at 340 Ecorse Road, Building 1, Ypsilanti, MI 48198. The license for the child care center, known as "De-Kidzone" is currently at an original, first provisional status.
2. On February 21, 2012 Than Biehl, Licensing Consultant, conducted an on-site inspection of De-Kidzone. Ms. Biehl determined that Petitioner was in violation of Rule 400.5103 in that the program director was not at the child care center at least 50% of the time children were in care. Based on this finding, a corrective action plan (CAP) was developed and signed by Petitioner on 3/5/2013. (Respondent's Exhibit 3).
3. On April 10, 2013, Ms. Biehl conducted a renewal inspection of Petitioner's child care center. Ms. Biehl determined that Petitioner was in violation of 36 Rules. (Respondent's Exhibit 1).
4. Ms. Biehl determined that Petitioner's day care center was in violation of several rules based on the following conduct:
 - a. Not having the program director present at least 50% of the time children are in care.
 - b. Not having current documentation showing that members of the staff had an ICHAT or a Central Registry check preformed on them.
 - c. Not having documentation to show current CPR, first aid, blood-borne pathogen, safe sleep, and shaken baby training for several members of the care-giving staff.
 - d. Not having an appropriate ratio of caregivers to infants/toddlers/and older toddlers.
 - e. Not maintaining proper records for the children including child information cards, attendance sheets, immunization records, physical evaluations, and care-giving records/assignments.
 - f. Not conducting fire drills on a quarterly basis, not having bottles for children labeled, having a torn changing pad, not properly sanitizing the changing area after each use, having expired ibuprofen accessible to children, and having cleaning supplies accessible to children.
 - g. The program director not having the required educational credits in child care administration. (Respondent's Exhibit 1).

5. On July 8, 2013, Ms. Biehl conducted another inspection of Petitioner's child care center. Ms Biehl was told by the employees present that they did not have access to the records for the children or staff. Ms. Biehl was unable to access any of the records during her inspection.
6. During the July 8, 2013 inspection, Ms. Biehl saw a rodent run across the kitchen counter at the child care center. Ms. Biehl additionally noted that the program director was not present during her inspection. Ms. Biehl could not access the records for children or staff during this inspection and was therefore unable to determine if the violations in relation to records noted during the prior inspection had been rectified. (Respondent's Exhibit 4).
7. On September 6, 2013, Office of Inspector General Senior Agent Jessica Mitchell submitted a Special Investigation Report regarding Petitioner. Agent Mitchell created said report based on her investigation of Petitioner's day care center. (Respondent's Exhibit 6).
8. Agent Mitchell determined that Petitioner had fraudulently collected \$6,082.50 in Child Development and Care (CDC) benefits from the Michigan Department of Human Services (DHS). Agent Mitchell determined that Petitioner was the individual responsible for billing DHS for CDC payments and that the fraud resulted from Petitioner billing for children who were not actually in attendance at the child care center. (Respondent's Exhibit 6).
9. Agent Mitchell referred the matter to the Washtenaw County Prosecutor's office for further disposition. (Respondent's Exhibit 6).
10. Petitioner was subsequently charged with two felonies by the Washtenaw County Prosecutor; False Pretenses greater than \$1,000.00 or more but less than \$20,000.00 (MCL 750.218(4)(a)) and Computers-Using to Commit a Crime (MCL 752.7973(d)). As of the date of the hearing, Petitioner was scheduled to begin her criminal trial pertaining to said charges on 1/27/2014.

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

In Count I, Respondent alleges that Petitioner's conduct constitutes a violation of R 400.5103(1)(b). At the hearing, it was not disputed that the program director of the child care center, Ms. Jacyntha Mathews was not present at the center at least 50% of the time the children were in care. Petitioner was cited for this same violation in the report of 2/27/2012 and a CAP was signed by Petitioner on 3/5/2013. Petitioner was cited again for this violation in April 17, 2013 report. At the hearing, Petitioner testified that she was still looking for a full time program director, but did not present evidence to show that a new director had in fact been hired to date or at the time the Amended Notice was issued. Accordingly, I find that Respondent has shown by a preponderance of the evidence that Petitioner substantially and willfully violated R 400.5103(1)(b).

COUNT II

In Count II, Respondent alleges that Petitioner's conduct constitutes a violation of R 400.5102(2)(b). As such, Respondent alleges that Petitioner did not perform a criminal history check on the staff using the internet criminal history access tool (ICHAT) of the Michigan State Police. During her inspection of April 10, 2013, Ms. Biehl noted that there was no ICHAT on record for seven caregivers. During her follow up inspection of July 8, 2013, Ms. Biehl was not able to access the records of the center because Petitioner was not present and the staff that was present at the time of the inspection did not have access to those records. Therefore, Petitioner did not show Ms. Biehl that she had performed the necessary ICHAT searches and come into compliance with R 400.5102(2)(b).

At the hearing, Petitioner presented a copy of an ICHAT performed for a Shadonna Lewis, an employee at Petitioner's child care center. While this does show that Petitioner is in compliance with respect to Ms. Lewis, there was no evidence presented that Petitioner was in compliance with the ICHAT requirement with respect to the remaining employees. Additionally, as Ms. Biehl was unable to access Petitioner's records during the July 8, 2013 inspection, Petitioner is unable to show that she was in compliance at the time of inspection, or at the time the Amended Notice was issued. Therefore, I find that Respondent has shown by a preponderance of the evidence that Petitioner substantially and willfully violated R 400.5102(2)(b).

COUNT III

In Count III, Respondent alleges that Petitioner's conduct constitutes a violation of R 400.5102a(1). As such, Respondent alleges that Petitioner was not in compliance with this rule by not having at least 1 caregiver with certifications in CPR and first aid on duty at the center at all times. In her report of April 10, 2013, Ms. Biehl noted that all six lead caregivers did not have current certifications on file in CPR and first aid training. Additionally, on April 10, 2013, Ms. Biehl noted that from 7:00 a.m. to 9:00 a.m. there was only one caregiver on duty and that caregiver did not have current certification in CPR and first aid training. Again, because Ms. Biehl was not able to access the records during her July 8, 2013 inspection, it could not be determined if Petitioner had brought herself into compliance by having the staff receive the necessary certifications.

At the hearing, Petitioner presented an invoice showing an amount charged for CPR and first aid training and showing Petitioner and several employees of her day care center as being participants. However, this is only an invoice and does not show that the individuals listed actually received their certification in either of the two disciplines. Additionally, there was no evidence presented to show that appropriate measures were taken to make sure that at least one individual with said certifications was present at the center at all times. Based on the preponderance of the evidence presented, I find that Respondent has shown that Petitioner substantially and willfully violated R 400.5102a(1).

COUNT IV

In Count IV, Respondent alleges that Petitioner's conduct constitutes a violation of R 400.5104(3). During her April 10, 2013 inspection, Ms. Biehl noted that Petitioner did not have Central Registry clearances on file for seven caregivers. Furthermore, during the July 8, 2013 inspection, Ms. Biehl was not able to access Petitioner's records to see if such clearances were on file for the caregivers. At the hearing, Petitioner presented a Central Registry check for a Shadonna Lewis. While this document shows that Petitioner did perform a Central Registry clearance check for Ms. Lewis, there was no evidence presented that such a check had been run for the other caregivers in question, or that such a check had been run at the time the Amended Notice was issued. In turn,

I find that Respondent has shown by a preponderance of the evidence that Petitioner willfully and substantially violated R 400.5104(3).

COUNT V

In Count V, Respondent contends that Petitioner's conduct constitutes a violation of R 400.5105. This rule states that a center shall provide appropriate care and supervision of children at all times. Based on the evidence of record, Petitioner did not have documentation that the care giving staff was properly trained in necessary life saving techniques or first aid, that their criminal history and Central Registry clearances were not on file and therefore, unknown, and that critical information for the children in care was not on file. Additionally, on April 10, 2013 there was not a proper ratio of staff to children present, and that proper sanitation procedures were not being followed. All these violations clearly posed a threat to the safety and health of the children in care. Accordingly, I find that Respondent has shown by a preponderance of the evidence that Petitioner substantially and willfully violated R 400.5105.

COUNT VI

In Count VI, Respondent contends that Petitioner's conduct constitutes a violation of R 400.5111(1), (3)(a)(b), (4), (5)(a)(b), and (8). In her April 10, 2013 inspection, Ms. Biehl noted that there were records missing for several children including information cards, immunization records, and physical evaluations. She further noted that there were incomplete attendance records, that primary caregiving assignments were not documented, and that daily records of infants in care were not provided to parents. Again, on the July 8, 2013 inspection, Ms. Biehl was not able to access Petitioner's records to show that she was in compliance with this rule. At the hearing, there was no evidence presented to show that Petitioner was in fact in compliance with this rule either at the time of the hearing or at the time the Amended Notice was issued. Accordingly, I find that Respondent has shown by a preponderance of the evidence that Petitioner willfully and substantially violated R 400.5111(1), (3)(a)(b), (4), (5)(a)(b), and (8).

COUNT VII

In Count VII, Respondent contends that Petitioner was in violation of R 400.5201a (1) and (2)(a). As such, Respondent alleges that Petitioner's center was out of ratio in terms of staff to children from 7:00 a.m. to 9:00 a.m. on April 10, 2013. The fact that Petitioner's center was out of ratio during this time was not disputed at the hearing. Petitioner testified that several of her staff members called off that day and that the ration was inappropriate due to the unexpected absences of the staff. Regardless of the unexpected nature of the call offs, the fact remains that having a noncompliant ratio of caregivers to children severely impairs the ability to properly supervise the children and in turn presents a risk of danger thereto. Therefore, I find that Respondent has

shown by a preponderance of the evidence that Petitioner willfully and substantially violated R 400.5201a (1) and (2)(a).

COUNT VIII

In Count VIII, Respondent alleges that Petitioner's conduct constitutes a violation of R 400.5940(1). During her April 10, 2013 inspection, Ms. Biehl noted that there was an expired bottle of ibuprofen in an unlocked kitchen drawer, that a bottle of milk sat out unrefrigerated and was not disposed of within one hour, that bottles for children were not properly labeled, that the changing pad in the center was torn, that staff failed to properly clean and sanitize the changing pad after each use, that the caregiving staff failed to have children wash their hands before eating breakfast, and that there were bottles of bleach and Pine-Sol cleaners in an unlocked cabinet under the kitchen sink that was accessible to children. At the hearing, Petitioner testified that the bottles of Pine-Sol and bleach were empty. Petitioner further provided testimony and photographs to show that a new changing pad had been provided, that bottles for children were now labeled, and that bottles for proper sanitization of the changing pad were located directly next to the changing pad.

Aside from the testimony as to the bottles under the sink, there was no evidence presented to refute the violations cited by Ms. Biehl in her report. The violations cited by Ms. Biehl clearly constitute a health risk to the children in care at the facility. Therefore, I find that Respondent has shown by a preponderance of the evidence that Petitioner willfully and substantially violated R 400.5940(1).

COUNT IX

In Count IX, Respondent alleges that Petitioner's conduct constitutes a violation of R 400.5102(1)(a) and (c). This rule requires that a licensee demonstrate that he or she is of good moral character and is suitable to meet the needs of the children. The September 6, 2013 Special Investigation Report submitted by Agent Mitchell concludes that Petitioner has defrauded the Michigan DHS by billing for CDC benefits for children who were not in the care of the center. The report clearly delineates hours that were billed for specific children and shows that those children were not in the care of Petitioner's day care center for the times that the bills were submitted. There were several statements by parents who stated that their children were not in attendance at Petitioner's day care center and yet bills for their care were submitted by Petitioner. There was no evidence presented to refute the report authored by Agent Mitchell. I find that this conduct clearly does not show good moral character as defined in MCL 338.41 to 338.47. Accordingly, I find that Respondent has shown by a preponderance of the evidence that Petitioner willfully and substantially violated R 400.5102(1)(a) and (c).

PROPOSED DECISION

The undersigned Administrative Law Judge proposes that the Director issue a Final Decision consistent with the above Findings of Fact and Conclusions of Law.

EXCEPTIONS

If a party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within fourteen (14) days after the date 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, Department of Licensing and Regulatory Affairs, P.O. Box 30695, Lansing, Michigan 48909-8195, and served on all parties to the proceeding.



Christopher S. Saunders
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 13th day of February, 2014.



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