



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF COMMUNITY AND HEALTH SYSTEMS

MIKE ZIMMER
DIRECTOR

March 3, 2016

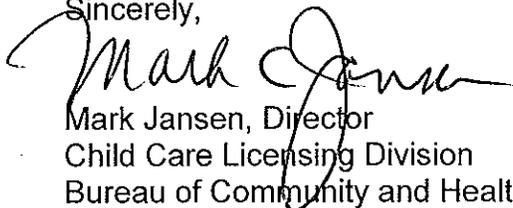
Maggie Meeks
2308 Forest Creek
Burton, MI 48519

Re: DF250314767
MAHS Docket No. 15-011137

Dear Ms. Meeks:

On or about February 16, 2016, you were mailed a copy of the Final Decision and Order upholding the Department of Licensing and Regulatory Affairs' Notice of Intent to Refuse to Renew your Certificate of Registration to operate an family child care home. In accordance with that Final Decision and Order, your certificate of registration is revoked and is now no longer in effect as of February 16, 2016. 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,


Mark Jansen, Director
Child Care Licensing Division
Bureau of Community and Health Systems

MJ/sw

cc: Scott Bettys, Area Manger

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

IN THE MATTER OF:

MAHS Docket No.: 15-011137

Maggie Meeks,
Petitioner

Agency Case No.: DF250314767

v

Agency: LARA-BCHS

Dept. of LARA-Bureau of
Community and Health Systems,
Respondent

Case Type: Child Day Care
Licensing

Issued and entered
this 16th day of February, 2016
by Michael Zimmer
Department Director

RECEIVED
LARA/BCHS

FEB 19 2016

FINAL DECISION AND ORDER

This matter began with a Notice of Intent to Refuse to Renew Certificate of Registration (hereafter "Notice of Intent"), dated January 12, 2015, issued by the Bureau of Children and Adult Licensing¹, Respondent, concerning the certificate of registration held by Maggie Meeks, Petitioner, to operate a family child care home under the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111 *et seq.* (hereafter "Act"). On February 3, 2015, Petitioner submitted an appeal of the Notice of Intent. On June 5, 2015, Respondent filed a Request for Hearing with the Michigan Administrative Hearing System.

A properly noticed hearing was held by Administrative Law Judge (ALJ) Aaron McClintic on August 25, 2015. On October 23, 2015, the ALJ issued a Proposal for Decision. On November 16 and 17, 2015, Petitioner filed Exceptions to the Proposal for Decision. Respondent did not file a response to the Exceptions. On December 18, 2015, the Michigan Administrative Hearing System prepared a Certification of Record.

¹ At the time of the issuance of the Notice of Intent to Refuse to Renew Certificate of Registration, the Bureau of Children and Adult Licensing was within the Department of Human Services (DHS). The applicable agency is now the Bureau of Community and Health Systems within the Department of Licensing and Regulatory Affairs (LARA), in accordance with Executive Order 2015-4.

Count I

In Count I, pertaining to paragraphs 2 through 6 of Notice of Intent, Respondent has alleged that Petitioner violated Rule 2(2) of the Licensing Rules for Family and Group Child Care Homes. This rule states as follows:

Rule. 2 (2) An applicant or the caregiver shall be of responsible character and shall be suitable and able to meet the needs of children and provide for their care, supervision, and protection. 2009 AACS, R 400.1902(2).

In the Proposal for Decision, the ALJ found that the Licensing Consultant credibly testified that the July 7, 2014 training certificate appeared altered, that only one hour of training was completed, and that it was not possible to complete 10 hours of training in one day. The ALJ did not find Petitioner's testimony credible that the training certificate may have been altered by a child. [Resp. Exh. C]. The ALJ concluded that Petitioner's actions in this regard demonstrated that she is not responsible or suitable to meet the needs of children and constituted willful and substantial violation of Rule 2(2) as alleged.

In the Exceptions to the Proposal for Decision, Petitioner indicates that she disagrees with some of the ALJ's statements in the Proposal for Decision, but she does not specifically address the ALJ's findings of fact and conclusions of law regarding Rule 2(2). After a review of the record evidence as a whole, I concur with the ALJ's findings of fact and conclusions of law on Count I that Petitioner has willfully and substantially violated Rule 2(2).

Count II

In Count II, regarding paragraph 3(a) of the Notice of Intent, Respondent has alleged that Petitioner violated Rule 3(1)(f) of the Licensing Rules for Family and Group Child Care Homes. This rule states as follows:

Rule. 3. (1) A caregiver shall be responsible for all of the following provisions: * * *

(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. 2009 AACS, R 400.1903(1)(f).

The ALJ found in the Proposal for Decision that it was undisputed Petitioner failed to 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. The ALJ found that this was a repeat violation from a 2011 inspection, and that

Petitioner had failed to comply with a prior corrective action plan. In the Exceptions to the Proposal for Decision, Petitioner asserts that she did have such a written agreement and that "it was with my medical paper." [Exceptions, p 1]. Petitioner does not dispute, however, the Licensing Consultant's testimony that Petitioner failed to produce the written and signed agreement at the time of the October 30, 2014 renewal inspection. A preponderance of evidence shows that this was a repeat violation from 2011, when the rule's requirement had been addressed in a corrective action plan. [Resp. Exh. A, B & E]. After a review of the record evidence as a whole, I concur with the ALJ's findings of fact and conclusions of law pertaining to Count II, that Petitioner has willfully and substantially violated Rule 3(1)(f).

Count III

In Count III, pertaining to paragraph 4 of the Notice of Intent, Respondent has alleged that Petitioner violated Rule 3(4)(b) of the Licensing Rules for Family and Group Child Care Homes. This rule states as follows:

Rule. 3. (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: * * *

(b) Information provided to the department shall be accurate and truthful. 2009 AACRS, R 400.1903(4)(b),

The ALJ found in the Proposal for Decision that Petitioner's testimony regarding the falsification of the training certificate was not credible and that Petitioner failed to cooperate with an inspection by being untruthful. In the Exceptions, Petitioner does not specifically address Count III or the ALJ's findings and conclusions pertaining to Rule 3(4)(b). After a review of the record evidence as a whole, I concur in the ALJ's findings of fact and conclusions of law on Count III that Petitioner has willfully and substantially violated Rule 3(4)(b).

Count IV

In Count IV, regarding paragraphs 4 and 5 of the Notice of Intent, Respondent has alleged that Petitioner violated Rule 5(1)&(7) of the Licensing Rules for Family and Group Child Care Homes. This rule states as follows:

Rule 5. (1) The caregiver shall complete not less than 10 clock hours of training each year related to child development, program planning, and administrative management for a child care business, not including CPR, first aid and blood borne pathogen training.

* * *

- (7) Infant, child, and adult CPR and first aid training shall be maintained in the following manner:
- (a) Each year for CPR.
 - (b) Every 36 months for first aid. 2009 AACCS, R 400.1905(1)&(7).

In the Proposal for Decision, the ALJ found that Petitioner did not refute the allegation that she had failed to complete at least 10 clock hours of training each year. The ALJ found that Petitioner had completed only two of the required 30 hours of training, and that she had not completed required CPR and First Aid training. In the Exceptions, Petitioner asserts that she will complete all of her class hours by December 20, 2015, and that the CPR and First Aid training is completed. [Exceptions, p 3]. Petitioner does not specifically dispute, however, that at the time of the renewal inspection she did not have the required clock hours of annual training, CPR and First Aid training. After a review of the record evidence as a whole, I concur with the ALJ's findings of fact and conclusions of law on Count IV that Petitioner has willfully and substantially violated Rule 5(1)&(7).

Count V

In Count V, regarding paragraph 3(b) of the Notice of Intent, Respondent has alleged that Petitioner violated Rule 7(3) of the Licensing Rules for Family and Group Child Care Homes. This rule states as follows:

Rule 7. (3) Dated daily attendance records of children in care shall be maintained and shall include the child's first and last name and the time of arrival and departure. 2009 AACCS, R 400.1907(3).

In the Proposal for Decision, the ALJ found that Petitioner failed to provide the required attendance records at both the renewal inspection and at hearing. The ALJ did not find credible Petitioner's testimony that she had the attendance records on her computer, and found that the violation was repetitive in nature and not corrected at the time of hearing. The ALJ found the violation established based on the Licensing Consultant's testimony. In the Exceptions, Petitioner asserts that "[t]he attendance was in . . . my computer. I have them from 3 year on my computer I will pull them . . . for you." [Exceptions, p 1]. Petitioner does not specifically dispute, however, that at the time of the renewal inspection she did not provide attendance records as required. After a review of the record evidence as a whole, I concur with the ALJ's findings of fact and conclusions of law on Count V that Petitioner has willfully and substantially violated Rule 7(3).

Count VI

In Count VI, regarding paragraph 6(a) of the Notice of Intent, Respondent alleged that Petitioner has violated Rule 15(3)(a)&(4) of the Licensing Rules for Family and Group Child Care Homes. This rule states as follows:

Rule 15. (3) A variety and number of easily accessible activity choices shall be available to the child, shall be safe and appropriate for a child at his or her stage of development, and shall be based on the licensed/registered number of children. All of the following apply to activity choices available:

(a) Materials may include, books, art supplies, blocks and accessories, large muscle equipment, manipulative toys, musical equipment, and dramatic play materials. * * *

(4) The caregiver shall not use any equipment, materials, and furnishing recalled or identified by the U.S. Consumer Product Safety Commission (<http://www.cpsc.gov/>) as being hazardous. As required by 2000 PA 219, MCL 722.1065, the caregiver shall conspicuously post in the child care home an updated copy of the list of unsafe children's products that is provided by the department. 2009 AACR, R 400.1915(3)(a)&(4). [Emphasis supplied].

In the Proposal for Decision, the ALJ found that Petitioner failed at the time of the renewal inspection to have a suitable variety and number of activity choices for the child care children and that Petitioner failed to post the required list of unsafe children's products. The ALJ found that this was a repeat violation from a 2011 inspection, and that Petitioner had not complied with a prior corrective action plan. In her Exceptions to the Proposal for Decision, Petitioner states that "there was tub of toys it out on my deck and it rain on it and the tub was full with rain water. It was all destroy most of them but this all been take care off [*sic*]. The older boys do baseball." She also stated that, "All consumer product safety is post on bill board." [Exceptions, p 2]. Petitioner does not specifically dispute, however, that at the time of the renewal inspection there was not a suitable variety and number of activity choices for the child care children and that a required list of unsafe children's products was not posted. After a review of the record evidence as a whole, I concur with the ALJ's findings of fact and conclusions of law on Count VI that Petitioner has willfully and substantially violated Rule 15(3)(a)&(4).

Count VII

In Count VII, regarding paragraph 6(b) of the Notice of Intent, Respondent has alleged that Petitioner violated Rule 20(5)(a) of the Licensing Rules for Family and Group Child Care Homes. This rule states as follows:

- Rule 20. (5) When swings, climbers, slides, and other similar play equipment with a designated play surface about 30 inches are used, they shall:
- (a) Not be placed over concrete, asphalt, or a similar surface, such as hard-packed dirt or grass. 2005 AACS, R 400.1920(5)(a).

In the Proposal for Decision, the ALJ found that Petitioner did have a designated play surface above 30 inches that was placed on what could be properly characterized as hard-packed grass. In her Exceptions to the Proposal for Decision regarding this rule, Petitioner stated, "Swings cannot used nothing but play [.] Grass only my grandchildren have skin problem [.] This why can't used nothing else." [Exceptions, p 3]. Petitioner does not appear to specifically dispute the ALJ's findings pertaining to the placement of the play equipment, however. After a review of the record evidence as a whole, I concur with the ALJ's findings of fact and conclusions of law on Count VII that Petitioner has willfully and substantially violated Rule 20(5)(a).

Count VIII

In Count VIII, regarding paragraph 6(c) of the Notice of Intent, Respondent has alleged that Petitioner violated Rule 21(1) of the Licensing Rules for Family and Group Child Care Homes. This rule states as follows:

- Rule 21. (1) The caregiver shall ensure that barriers exist to prevent children from gaining access to any swimming pool, drainage ditch, well, natural or constructed pond or other body of open water located on or adjacent to the property where the child care home is located. Such barriers shall be of a minimum of 4 feet in height and appropriately secured to prevent children from gaining access to such areas. 2009 AACS, R 400.1921(1).

In the Proposal for Decision, the ALJ found it was undisputed that the backyard of the licensed family child care home contained an above-ground pool without a barrier to separate the pool from the children's play area, and that a filter pump on the ground provided a mechanism to climb into the pool. In her Exceptions to the Proposal for

Decision, Petitioner states in pertinent part that "[t]here was only ½ foot of water in pool" and "their [*sic*] a gate with a lock so no one can get in." [Exceptions, p 4]. It is not clear from Petitioner's statements in the Exceptions whether it is her contention that there was a gate with a lock on a barrier preventing access to the pool at the time of the renewal inspection or that such a locked gate exists currently. Petitioner's Exceptions do not dispute that there was some water in the pool and there existed a mechanism to climb into the pool at the time of the renewal inspection. After a review of the record evidence as a whole, I concur with the ALJ's findings of fact and conclusions of law on Count VIII that Petitioner has willfully and substantially violated Rule 21(1).

Count IX

In Count IX, regarding paragraph 6(d) of the Notice of Intent, Respondent has alleged that Petitioner violated Rule 32(2) of the Licensing Rules for Family and Group Child Care Homes. This rule states as follows:

Rule 32. (2) All dangerous and hazardous materials or items shall be stored securely and out of the reach of children.
2009 AACS, R 400.1932(2).

In the Proposal for Decision, the ALJ found it was undisputed that Respondent did not securely store and keep out of reach of the child care children hazardous materials or items, including bottles of rubbing alcohol, cleaning products and air freshener in a cabinet under the bathroom sink. In the Exceptions Petitioner indicates in pertinent part that she did not know that there were hazardous materials under the cabinet, but that it has been corrected. [Exceptions, p 4]. Petitioner does not appear to dispute, however, that at the time of the renewal inspection there were hazardous materials or items that were not securely stored out of the reach of children. After a review of the record evidence as a whole, I concur with the ALJ's findings of fact and conclusions of law on Count IX that Petitioner has willfully and substantially violated Rule 32(2).

Count X

In Count X, regarding paragraph 6(e) of the Notice of Intent, Respondent has alleged that Petitioner violated Rule 33(4) of the Licensing Rules for Family and Group Child Care Homes. This rule states as follows:

Rule 33. (4) Hot water temperature shall not exceed 120 degrees Fahrenheit at water faucets accessible to children.
2005 AACS, R 400.1933(4).

In the Proposal for Decision, the ALJ found that there was no dispute at hearing that during the renewal inspection the Licensing Consultant had measured the water

temperature from the faucet used by the (child care) children as reaching 137 degrees Fahrenheit. The ALJ found that this was a repeat violation by Petitioner from a 2011 inspection, and that Petitioner had failed to comply with a prior corrective action plan. In the Exceptions, Petitioner indicates that there had been a new water heater put in and that she did not know that it was not set on the right temperature, but that it has been corrected. [Exceptions, p 2]. There appears no dispute, however, that at the time of the renewal inspection Petitioner was in violation of the rule on hot water temperature and that this was a repeat violation. After a review of the record evidence as a whole, I concur with the ALJ's findings of fact and conclusions of law on Count X that Petitioner has willfully and substantially violated Rule 33(4).

Count XI

In Count XI, regarding paragraph 6(f) of the Notice of Intent, Respondent has alleged that Petitioner violated Rule 44(3) of the Licensing Rules for Family and Group Child Care Homes. This rule states as follows:

Rule 44 (3) A home shall have at least 1 functioning multipurpose fire extinguisher, with a rating of 2A-10BC or larger, properly mounted not higher than 5 feet from the floor to the top of the fire extinguisher, on each floor level approved for child use. 2009 AACS, R 400.1944(3).

In the Proposal for Decision, the ALJ found it was undisputed that at the renewal inspection the fire extinguisher on the first floor of Petitioner's family child care home was empty. The ALJ found that this was a repeat violation from a 2011 inspection, and that Petitioner had failed to comply with a prior corrective action plan. In the Exceptions, Petitioner states that the fire extinguisher was never used "so this while I didn't know it read empty my Granddaughter open it up & it wasn't empty at all[.] She spray it empty and put in garbage. But their is a news been replace." [Exceptions, p 3]. To the extent Petitioner's statement is intended to dispute the ALJ's findings regarding the status of the fire extinguisher at the time of the renewal inspection, it is not based on evidence in the record. After a review of the record evidence as a whole, I concur with the ALJ's findings of fact and conclusions of law on Count XI that Petitioner has willfully and substantially violated Rule 44(3).

Count XII

In Count XII, regarding paragraph 6(g) through 6(i) of the Notice of Intent, Respondent has alleged that Petitioner violated Rule 45(1),(3)&(4) of the Licensing Rules for Family and Group Child Care Homes. This rule states as follows:

Rule 45.

(1) A written plan for the care of children shall be established and posted for each of the following emergencies:

- (a) Fire evacuation.
- (b) Tornado watches and warnings.
- (c) Serious accident or injury.
- (d) Water emergencies, if applicable.

(3) Fire drills shall be practiced at least once a month and a written record that includes the date and time it takes to evacuate shall be maintained.

(4) Tornado drills shall be practiced once a month, April to October, and a written record that includes the date shall be maintained. 2005.AACS, R 400.1945(1), (3) & (4).

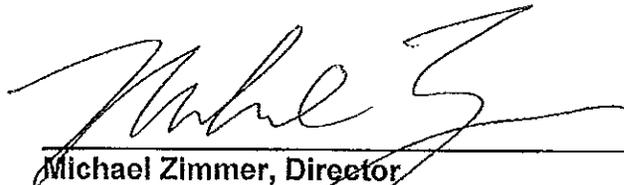
In the Proposal for Decision, the ALJ found that Petitioner had failed to conduct both fire and tornado drills at the required frequency, had not maintained records of fire/tornado drills for all of the required months, and had not established a written plan for emergencies. Petitioner testified that she did not need emergency plans because she had experienced emergencies in the past, including a fire, and that she was able to keep her (child care) children safe. Petitioner further testified that she had discussed emergency measures, but she did not show that a written plan was established. Petitioner did not dispute at hearing Respondent's evidence regarding the frequency of the fire or tornado drills as testified to by the Licensing Consultant. In the Exceptions, however, Petitioner asserts that there was an emergency plan posted. Petitioner acknowledges in the Exceptions that she had been behind on tornado and fire drills when she had an accident, but states that it is now corrected. [Exceptions, p 4]. After a review of the record evidence as a whole, including Petitioner's own testimony at hearing, I concur with the ALJ's findings of fact and conclusions of law on Count XII that Petitioner has willfully and substantially violated Rule 45(1),(3)&(4).

Accordingly, after a review of the full certified hearing record including the ALJ's Proposal for Decision and Petitioner's Exceptions, it is found and concluded that Petitioner has willfully and substantially violated Rules 2(2), 3(1)(f), 3(4)(b), 5(1)&(7), 7(3), 15(3)(a)&(4), 20(5)(a), 21(1), 32(2), 33(4), 44(3) and 45(1),(3)&(4) of the Licensing Rules for Family and Group Child Care Homes, R 400.1901 *et seq.*, as alleged in Counts I through XII of the Notice of Intent.

ORDER

NOW THEREFORE, IT IS ORDERED that:

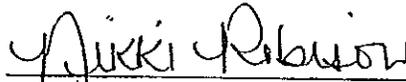
1. The ALJ's Proposal for Decision, dated October 23, 2015, is hereby adopted in its entirety and incorporated hereto by reference, and made a part of this Final Decision and Order (attached);
2. Petitioner's application to renew her certificate of registration to operate a family child care home in the state of Michigan is hereby DENIED, and the certificate of registration is hereby REVOKED.



Michael Zimmer, Director
Department of Licensing and Regulatory Affairs

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 first class mail at their respective addresses as disclosed below or electronic or I.D. mail delivery as specified this 16th day of February 2016.



Nikki Robison
Department of Licensing and Regulatory Affairs

Via First Class Mail

Maggie Meeks
2308 Forest Creek
Burton, MI 48519

Via Electronic Delivery

Jennifer Kerr
LARA-Disciplinary Action Unit
201 N. Washington Square, 4th Floor
Lansing, MI 48909

Bureau of Community and Health Systems
Attn: Steven Gobbo
611 W. Ottawa Building – 1st Floor
Lansing, MI 48909

Genesee County DHHS
Hearings Coordinator
125 E. Union St.
P.O. Box 1628
Flint, MI 48501

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

MAHS Docket No.: 15-011137

Maggie Meeks,
Petitioner

Agency Case No.: DF250314767

v

Case Type: Child Day Care Licensing

LARA - Bureau of Community and
Health Systems,
Respondent

Issued and entered
this 23rd day of October, 2015
by Aaron McClintic
Administrative Law Judge

PROPOSAL FOR DECISION

RECEIVED
OCT 26 2015
BCHS

This matter began with Respondent's January 12, 2015 Notice of Intent to Refuse to Renew Certificate of Registration (Notice of Intent) regarding Petitioner's registration to operate a family child care home under the Child Care Organizations Act (Act), 1973 PA 116, as amended, MCL 722.111 *et seq.* (hereafter "Act"). On February 3, 2015, Petitioner submitted an appeal and request for hearing to Respondent.

On June 5, 2015, Bureau of Community and Health Systems, hereafter "Respondent", filed a request for hearing with the Michigan Administrative Hearing System. On July 21, 2015, the Michigan Administrative Hearing System issued a Notice of Hearing, scheduling a hearing for August 25, 2015.

On August 25, 2015, the hearing was held as scheduled. Kelly Maltby, Departmental Analyst, appeared as representative on behalf of Respondent. Elaine Rauch, Licensing Consultant, testified for the Respondent. Maggie Meeks, hereafter "Petitioner", appeared on her own behalf at the hearing and testified.

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

1. Respondent's Exhibit A is a Renewal Inspection Report dated November 6, 2014, signed by Elaine H. Rauch, Licensing Consultant, and Scott Bettys, Area Manager.
2. Respondent's Exhibit B is a copy of a follow-up letter following the 90 day inspection conducted on September 26, 2011, dated September 27, 2011.

3. Respondent's Exhibit C is a copy of a Certificate of Training, dated July 7, 2014.
4. Respondent's Exhibit D is a copy of a Certificate of Training, dated June 30, 2014.
5. Respondent's Exhibit E is a copy of a Corrective Action Plan, dated September 26, 2011.

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

1. Petitioner's Exhibit 1 is a copy of an Orientation Attendance, dated August 18, 2011.
2. Petitioner's Exhibit 2 is a Certificate of Training dated June 14, 2012, from Association for Child Development.
3. Petitioner's Exhibit 3 is a Certificate of Training dated July 22, 2013, from Association for Child Development.

The record was closed at the conclusion of the hearing.

ISSUES and APPLICABLE LAW

The general issues presented are whether Petitioner has acted in willful and substantial violation of the Act, or rules promulgated under the Act with respect to the operation of a family child care home.

The specific issues are whether Petitioner violated R 400.1902(2), R 400.1903(1)(f), R 400.1903(4)(6), R 400.1905(1) &(9), R 400.1907(3), R 400.1915(3)&(4), R 400.1920(5)(a); R 400.1921(1), R 400.1932(2), R 400.1933(4), R 400.1944(3), and R 400.1945(1),(3) & (4) of the Licensing Rules for Family and Group Child Care Home, Mich Admin Code, R 400.1901 *et seq*, which provide, in pertinent part:

R 400.1902

(2) An applicant or the caregiver shall be of responsible character and shall be suitable and able to meet needs of children and provide for their care, supervision and protection.

R 400.1903

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

(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.

R 400.1903

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

R 400.1905

(1) The caregiver shall complete not less than 10 clock hours of training each year related to child development, program planning, and administrative management for a child care business, not including CPR, first aid, and blood borne pathogen training.

(7) Infant, child and adult CPR and first aid training shall be maintained in the following manner: (a) Each year for CPR. (b) Every 36 months for first aid.

R 400.1907

(3) Dated daily attendance records of children in care shall be maintained and shall include the child's first and last name and the time of arrival and departure.

R 400.1915

(3) A variety and number of easily accessible activity choices shall be available to the child, shall be safe and appropriate for a child at his or her age of development, and shall be based on the licensed/registered number of children. All of the following apply to activity choices available:

(a) Materials may include books, art supplies, blocks and accessories, large muscle equipment, manipulative toys, musical equipment, and dramatic play materials.

(4) The caregiver shall not use any equipment, materials, and furnishing recalled or identified by the US Consumer Product Safety Commission (<http://www.cspc.gov/>) as being hazardous. As required by 200 PA 219, MCL 722.1065, the caregiver shall conspicuously post in the child care home an updated copy of the list of unsafe children's products that is provided by the department.

R 400.1920

(5) When swings, climbers, slides, and other similar play equipment with a designated play surface above 30 inches are used, they shall: (a) not be placed over concrete, asphalt, or similar surface, such as hard-packed dirt or grass.

R 400.1921

(1) The caregiver shall ensure that barriers exist to prevent children from gaining access to any swimming pool, drainage ditch, well, natural or constructed pond or other body of open water located on or adjacent to the property where the child care home is located. Such barriers shall be a minimum of 4 feet in height and appropriately secured to prevent children from gaining access to such areas.

R 400.1932

(2) All dangerous and hazardous materials or items shall be stored securely and out of the reach of children.

R 400.1933

(4) Hot water temperature shall not exceed 120 degrees Fahrenheit at water faucets accessible to children.

R 400.1944

(3) A home shall have at least 1 functioning multipurpose fire extinguisher with a rating of 2A-10BC or larger, properly mounted not higher than 5 feet from the floor to the top of the fire extinguisher, on each floor level approved for child use.

R 400.1945

(1) A written plan for the care of children shall be established and posted for each of the following emergencies: (a) fire evacuation. (b) tornado watches and warnings.

(2) serious accident or injury; water emergencies, if applicable.

(3) Fire drills shall be practiced at least once a month and a written record that includes the date and time it takes to evacuate shall be maintained.

(4) Tornado drills shall be practiced once a month, April to October, and a written record that indicates the date shall

be maintained.

SUMMARY OF EVIDENCE

The following is intended as only a brief summary of relevant evidence from the August 25, 2015 proceeding.

The hearing record indicates that Petitioner Meeks has been licensed since 2011. The only prior inspection of Petitioner Meek's residence was the 90 day inspection conducted on September 26, 2011. At that time, there were 8 violations were noted.

Testimony of Licensing Consultant Elaine Rauch

Elaine Rauch, testified that in her capacity as a Licensing Consultant, she conducted a renewal inspection at Petitioner's residence on October 30, 2014. Like all inspections, the October renewal was an unannounced inspection. During the renewal inspection, sixteen violations were observed and noted by Ms. Rauch. The violations below were discussed during Ms. Rauch's testimony:

Rule 400.1903 Caregiver responsibilities

During the renewal inspection, Licensing Consultant Rauch noted no written agreement for an adult to provide care and supervision during an emergency situation was provided despite her requesting Petitioner to provide it.

Rule 400.1905 Training

Licensing Consultant Rauch testified that as a caregiver, Petitioner was required to complete ten clock hours of training each year. During the October 2014 renewal inspection, the materials reviewed by Licensing Consultant Rauch indicated that Petitioner had completed only two hours of training for the past licensing year. She testified that she spoke with someone from Association for Child Development and that the maximum length of training was 8 hours, so a certificate showing 10 hours must have been altered. Also it appeared that the June 30, 2014, document had been altered from the original June 30, 2011, date.

Rule 400.1933 Water supply; sewage disposal; water temperature

Turning to the issue of water temperature in the home, the witness testified that the hot water temperature is not allowed to exceed 120 degree Fahrenheit at faucets that are accessible to children. The water temperature was measured at a faucet used by children in the home, and it was determined to be 137 degrees Fahrenheit.

Rule 400.1920 Outdoor play area and equipment

During the renewal inspection, Licensing Consultant Rauch noted the presence of outdoor play equipment, which was determined to be normally kept on what the witness characterized as "hard-packed grass". A lack of adequate play equipment was noted, only a truck, a car and 2 stuffed animals were available. An above-ground pool without a barrier was noted and also the filter on the ground next to the pool gave a mechanism to climb into the pool.

Rule 400.1932 Home and maintenance safety

During the renewal inspection, Licensing Consultant Rauch noted the presence of rubbing alcohol; cleaning products and air freshener underneath the bathroom sink which was accessible to children.

Rule 400.1945(3) & Rule 400.1945(4) Fire; tornado; serious accident and injury plans

During the October 2014 renewal inspection, Licensing Consultant Rauch noted that fire drills were supposed to be completed monthly, but only six had been recorded in the last three years.

Similarly, the witness testified that there were no records of tornado drills being conducted during the months of April through October of 2014, or at any time during the previous few years.

No written plan for fire, tornado or other emergency had also been established.

Rule 400.1944 smoke detectors; fire extinguisher

During the October 2014 renewal inspection, Licensing Consultant Rauch noted that the fire extinguisher on the 1st floor of the home was empty.

Rule 400.1907(2) Record Review/Updates

Licensing Consultant Rauch was asked about the maintenance of children's records in the home. No records were provided. Petitioner asserted they were kept on her computer but the records were not provided.

The witness was asked regarding willful and substantial non-compliance. The witness testified that she felt that the violations she discussed were both legally willful and substantial.

Testimony of Petitioner Maggie Meeks

The Petitioner testified on her own behalf at the August 25, 2015 hearing.

Rule 400.1903 Caregiver responsibilities

Petitioner did not dispute that no written agreement for an adult to provide care and supervision during an emergency situation was provided, despite her being requested to provide it.

Rule 400.1905 Training

Petitioner did not dispute that she failed to complete the required training hours.

Rule 400.1933 Water supply; sewage disposal; water temperature

Petitioner did not dispute that the water temperature was too high.

Rule 400.1920 Outdoor play area and equipment

Petitioner testified that she did need to upgrade her toy chest.

Rule 400.1932 Home and maintenance safety

Petitioner did not dispute the presence of rubbing alcohol; cleaning products and air freshener underneath the bathroom sink which was accessible to children.

Rule 400.1945(3) & Rule 400.1945(4) Fire; tornado; serious accident and injury plans

Petitioner did not dispute that no written plan for fire, tornado or other emergency had been established. She described that she has experienced fires in the past and was able to get her children out.

Rule 400.1944 smoke detectors; fire extinguisher

Petitioner testified that the empty fire extinguisher was an oversight.

Rule 400.1907(2) Record Review/Updates

Petitioner asserted they were kept on her computer but the records were not provided.

Petitioner testified that she has experienced difficulties in her life. Her son died in 2010. She lost her house to a fire. She was in a car accident that required extensive rehabilitation and therapy. She is the mother of nine children.

FINDINGS OF FACT

Based on the entire record in this matter the following findings of fact are established:

1. On or about August 25, 2011, Petitioner (termed "Registrant" in the Notice of Intent) was issued a certificate of registration to operate a family child care home, with a current registered capacity of six, at 2308 Forest Creek in Burton, Michigan.
2. On or about October 30, 2014, Licensing Consultant Elaine Rauch conducted a renewal inspection of the Petitioner's family child care home.
3. On October 30, 2014, Licensing Consultant Elaine Rauch completed an on-site inspection as part of the Petitioner's renewal process. During that inspection Ms. Rauch cited Petitioner with the following 18 licensing rule violations:
 - a. R 400.1903(1)(f): There was no written and signed agreement with an adult emergency caregiver;
 - b. R 400.1903(4): Petitioner submitted an altered training certificate;
 - c. R 400.1905(1): Caregiver completed less than 10 hours of training;
 - d. R 400.1905(7)(a): CPR training was not completed within last year;
 - e. R 400.1905(b): First Aid training was not completed within last 3 years;
 - f. R 400.1915(3): Inadequate activity choice materials were provided.
 - g. R 400.1920(5): Swing set above 30 inches placed over grass.
 - h. R 400.1921(1): Above-ground pool without barrier;
 - i. R 400.1932: Hazardous and dangerous materials within reach of children;
 - j. R 400.1933(4): The water temperature was 137 degrees Fahrenheit in the sink used by children in care;
 - k. R 400.1944(3)(4): Fire extinguisher empty on main floor

- l. R 400.1945(1)(a): There were no emergency plans written or posted for fire evacuation;
 - m. R 400.1945(4): There are no records of tornado drills being conducted.
 - n. R 400.1923(2)(g): There was no plastic liner in the container used for disposal of diapers;
 - o. R 400.1941(6): The furnace and water heater were last inspected on October 12, 2009;
 - p. R 400.1945(1)(b): There were no emergency plans written or posted for tornado watches or warnings;
 - q. R 400.1945(1)(c): There were no emergency plans written or posted for serious accidents or injuries;
 - r. R 400.1945(3): There were only records of fire drills being conducted on 9/1/2011, 1/3/2012, 5/1/2012, 2/16/2014, 5/16/2014, and 7/2/2014.
- 4. On January 8, 2015, the Notice of Intent was issued in this matter.
 - 5. On February 3, 2015, Petitioner submitted to Respondent an appeal of the Notice of Intent.
 - 6. At hearing Licensing Consultant Rauch testified that the July 7, 2014, appeared altered. She further testified that she spoke with someone at the Association for Child Development that confirmed only 1 hour was completed and that it was not possible to complete 10 hours of training in one day. Licensing Consultant's testimony regarding this issue was credible.
 - 7. At hearing, Petitioner testified that the training certificate dated July 7, 2014, was not altered by her and may have been altered by a child in her care. The undersigned Administrative Law Judge finds this testimony not credible. The alteration does not appear to be a child's scribble. (Exhibit C)

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. 8 *Callaghan's Michigan Pleadings and Practice*, §60.248, at 230 (2d ed. 1994). The burden of proof in this matter is on Respondent to prove by a preponderance of the

evidence the factual and legal allegations in the Notice of Intent, and that grounds exist to revoke Petitioner's certificate of registration or to take other action under the Act.

MCL 722.121 provides:

(2) The department may deny, revoke, or refuse to renew a license or certificate of registration of a child care organization when the licensee, registrant, or applicant falsifies information on the application or willfully and substantially violates this act, the rules promulgated under this act, or the terms of the license or certificate of registration.

The principles that govern judicial proceedings also apply to administrative hearings. The burden of proof is upon Respondent to prove by a preponderance of the evidence that grounds exist for the imposition of sanctions upon the Petitioner. The Administrative Law Judge (ALJ) evaluates the testimony and evidence elicited at the hearing and renders a proposed decision setting forth an opinion as to whether the registrant in fact committed a willful and substantial violation of the Act, rules or terms of the license. If a willful and substantial violation is determined, the Director of the Department is statutorily empowered to take appropriate adverse action against the certificate of registration. Thus, the words "willful and substantial" must be evaluated.

The words "willful and substantial" as used in the Act are defined in the applicable Administrative Rule as follows:

R 400.16001

(c) "Noncompliance" means a violation of the act or act 218, an administrative rule promulgated under the act or act 218, or the terms of a license or a certificate of registration.

(d) "Substantial noncompliance" means repeated violations of the act or act 218 or an 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 a certificate of registration.

In the present case, the Notice of Intent to Refuse to Renew Certificate of Registration sets forth twelve counts asserting the allegations against the Registrant.

Count I -R 400.1902(2)

By this charge, Respondent asserts that Petitioner failed to be of responsible character and be suitable and able to meet the needs of children and provide for their care, supervision, and protection.

The testimony of Licensing Consultant Rauch noted Petitioner was untruthful when she altered the training document she submitted. Petitioner's actions in altering a document pertinent to the operation of the child care home demonstrates her lack of responsible character and suitability.

Petitioner asserted that the document may have been altered by a child and denied altering the document. Her testimony was not credible. The alteration appears to be intentional and not a scribble by a child.

In altering documents pertinent to operation of child care home, her actions demonstrate a violation of R 400.1902(2) as Petitioner is not responsible or suitable to meet the needs of children. It is a willful violation, as the Petitioner was aware or should have been aware of Rule 400.1902(2), which requires that a person be of responsible character and suitable to meet the needs of children and provide for their care, supervision and protection.

Further, the violation meets the legal definition of being a substantial violation, as the lack of responsible character and lack of suitability are of a nature that it necessarily jeopardized the health, safety, and care of children in the home.

Therefore, based on the record, Respondent has established by a preponderance of the evidence, a willful and substantial violation of Rule R 400.1902(2).

Count II -R 400.1903(1)

By this charge Respondent asserts that the Petitioner failed to 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.

The testimony of Licensing Consultant Rauch noted the lack of the required agreement with a backup person in case of an emergency. Petitioner did not refute this contention.

Here, there was a violation of R 400.1903(1) as the facts were undisputed. It is a willful violation, as the Petitioner was aware or should have been aware of Rule 400.1903(1),

which required the agreement.

Further, the violation meets the legal definition of being a substantial violation, as the fact that the children may be without care and supervision in the event of an emergency is of a nature that it necessarily jeopardized the health, safety, and care of children in the home.

Therefore, based on the record, Respondent has established by, a preponderance of the evidence, a willful and substantial violation of Rule R 400.1903(1).

In addition, this is a repeat violation. On September 26, 2011, Licensing Consultant Catherine Edgar conducted a 90-day inspection of the Petitioners child care home. Ms. Edgar cited the Petitioner for eight rule violations, including failure to have a written agreement with an emergency caregiver. On September 26, 2011, the Petitioner submitted written corrective action plan that addressed this rule violation. Petitioner failed to comply with the corrective action plan.

Count III -R 400.1903(4)

By this charge Respondent asserts that the Petitioner failed to cooperate in connection with an inspection by being untruthful and falsifying training certificate with an intent to deceive.

Petitioner did not deny that the records were altered. The Petitioner testified that one of the children may have altered the certificate. The Petitioner's testimony regarding the falsification of the record was not credible.

Petitioner's conduct, as established in the above findings of fact, related to the renewal of her license. This ALJ finds that the seriousness of the falsification establishes "substantial noncompliance" as defined above.

The Petitioner certainly knew or had reason to know that her conduct in failing to cooperate with an inspection, as established above, was in violation of the family child care home rules. Thus, the established violation was "willful noncompliance" as defined above.

Therefore, Respondent has established by, a preponderance of the evidence, a willful and substantial violation of Rule R 400.1903(4). Petitioner's violation of the above-referenced rule was both legally "willful noncompliance" and "substantial noncompliance" as those terms are defined by 2000 AACS, R 400.16001, *supra*. Again, the Petitioner knew or had reason to know that failing to cooperate in connection with an inspection by being untruthful was a violation of this rule. Thus, the established violation was "willful noncompliance" as defined above.

Count IV -R 400.1905(1)&(7)

By this charge Respondent asserts that the Petitioner failed to complete at least 10 clock hours of training each year related to child development, program planning, and administrative management for a child care business and failed to complete First Aid and CPR training.

Petitioner did not refute the allegation that she failed to complete at least 10 clock hours of training each year. Petitioner only completed 2 hours of the required 30 hours. Even if the falsified records had been accepted, she would have been short the required training hours.

Petitioner also failed to complete the required CPR and First Aid training. The last CPR training was March 2011 and the last First Aid training was March 2011, more than 1 year ago for the CPR training and more than 3 years ago for the First Aid training.

Further, the violation meets the legal definition of being a substantial violation, as the lack of CPR and first aid training was of a nature that it necessarily jeopardized the health, safety, and care of children in the home.

The Petitioner certainly knew or had reason to know that her conduct in not obtaining and/or maintaining documentation of training hours and in not completing the training, as established above, was in violation of the family child care home rules. Thus, the established violation was "willful noncompliance" as defined above.

Therefore, based on the record, Respondent has established by a preponderance of the evidence, a willful and substantial violation of Rule R 400.1905(1)&(7). Petitioner's violations of the above-referenced rules were both legally "willful noncompliance" and "substantial noncompliance" as those terms are defined by 2000 AACS, R 400.16001, *supra*.

Count V -R 400.1907(3)

By this charge Respondent asserts that the Petitioner failed to provide dated daily attendance records of children in care including first and last name of children and arrival and departure time.

The Petitioner is registered to care for up to six children at her home. The testimony of Licensing Consultant Rauch established that no attendance records were provided.

Again, Petitioner did not deny that the records were not provided. The Petitioner testified that she has the records on her computer but she failed to provide any records at the inspection or at hearing. Petitioner's testimony was not credible on this issue.

Further, the violation meets the legal definition of being a substantial violation, as the fact that children may not be able to be accounted for was of a nature that it necessarily

jeopardized the health, safety, and care of children in the home.

Petitioner's conduct, as established in the above findings of fact, was not a matter of oversight regarding a single record, but was repetitive and she failed to correct it at hearing. This ALJ finds that the reality that no records were provided establishes "substantial noncompliance" as defined above.

The Petitioner certainly knew or had reason to know that her conduct in not maintaining daily attendance records, as established above, was in violation of the family child care home rules. Thus, the established violation was "willful noncompliance" as defined above.

Therefore, Respondent has established by, a preponderance of the evidence, a willful and substantial violation of Rule R 400.1907(3). Petitioner's violation of the above-referenced rule was both legally "willful noncompliance" and "substantial noncompliance" as those terms are defined by 2000 AACS, R 400.16001, *supra*. Again, the Petitioner knew or had reason to know that the failure to provide records for the children in care was a violation of the family child care home rules. Thus, the established violation was "willful noncompliance" as defined above.

Count VI -R 400.1915(3) &(4)

By this charge Respondent asserts that the Petitioner failed to provide a suitable variety and number activity choices and failed to post the list of unsafe children's products.

Further, Licensing Consultant Rauch testified that at the time of the October 2014, inspection the home only contained a toy truck, a toy car and two stuffed animals available for child use. In addition, testimony was presented that the required list of unsafe products was not posted.

Petitioner indicated that there were other toys available in the house. Petitioner did not refute the allegation that the unsafe products list was not posted.

The Petitioner certainly knew or had reason to know that her conduct in not having a suitable variety and number of activity choices and not have the listed of unsafe products posted, as established above, was in violation of the family child care home rules. Thus, the established violation was "willful noncompliance" as defined above.

Further, the violation meets the legal definition of being a substantial violation, as the fact that unsafe children's products may be in the home, was of a nature that it necessarily jeopardized the health, safety, and care of children in the home.

Therefore, Respondent has established by, a preponderance of the evidence, a willful and substantial violation of Rule R 400.1907(3). Petitioner's violation of the above-referenced rule was both legally "willful noncompliance" and "substantial noncompliance" as those terms are defined by 2000 AACS, R 400.16001, *supra*.

Again, the Petitioner knew or had reason to know that the failure to provide records for the children in care was a violation of the family child care home rules. Thus, the established violation was "willful noncompliance" as defined above.

In addition, this is a repeat violation. On September 26, 2011, Licensing Consultant Catherine Edgar conducted a 90-day inspection of the Petitioner's child care home. Ms. Edgar cited the Registrant for eight rule violations, including failure to have sufficient play equipment in the child care home. On September 26, 2011, the Petitioner submitted written corrective action plan that addressed this rule violation. Petitioner failed to comply with the corrective action plan.

Count VII -R 400.1920(5)

By this charge Respondent asserts that the Petitioner utilized an outdoor play area/equipment with a designated play surface above 30 inches, which was placed over hard-packed dirt or grass.

The play equipment at issue clearly appears to have a designated play surface above 30 inches (Exhibit B, at Page 3). Further, Licensing Consultant Rauch testified that at the time of the October 2014 inspection the surface where the equipment was placed could be properly characterized as "hard-packed grass".

Petitioner did not dispute these facts at hearing.

The Petitioner certainly knew or had reason to know that her conduct in having play equipment over hard packed grass, as established above, was in violation of the family child care home rules. Thus, the established violation was "willful noncompliance" as defined above.

Further, the violation meets the legal definition of being a substantial violation, as the fact that play equipment was over hard-packed grass, was of a nature that it necessarily jeopardized the health, safety, and care of children in the home.

Therefore, Respondent has established by, a preponderance of the evidence, a willful and substantial violation of Rule R 400.1907(3). Petitioner's violation of the above-referenced rule was both legally "willful noncompliance" and "substantial noncompliance" as those terms are defined by 2000 AACRS, R 400.16001, *supra*. Again, the Petitioner knew or had reason to know that the placement of play equipment over grass was a violation of the family child care home rules. Thus, the established violation was "willful noncompliance" as defined above.

Count VIII -R 400.1921(1)

By this charge Respondent asserts that the Petitioner failed to ensure the barriers exist to prevent children from gaining access to a swimming pool.

Licensing Consultant Rauch testified that the backyard contained an above ground pool without a barrier to separate the pool from the children's play area. Also the filter pump was placed on the ground next to the pool which provided a mechanism to climb into the pool.

Petitioner did not dispute these facts and only offered that the pool had very little water.

Further, the violation meets the legal definition of being a substantial violation, as the fact that the pool was accessible was of a nature that it necessarily jeopardized the health, safety, and care of children in the home.

The Petitioner certainly knew or had reason to know that her conduct in having a pool that was accessible to children, as established above, was in violation of the family child care home rules. Thus, the established violation was "willful noncompliance" as defined above.

Therefore, Respondent has established by, a preponderance of the evidence, a willful and substantial violation of Rule R 400.1921(1). Petitioner's violation of the above-referenced rule was both legally "willful noncompliance" and "substantial noncompliance" as those terms are defined by 2000 AACS, R 400.16001, *supra*.

Count IX -R 400.1932(2)

By this charge Respondent asserts that the Petitioner failed to securely store and keep out of reach of children all hazardous and dangerous materials.

Licensing Consultant Rauch testified that there were bottles of rubbing alcohol, cleaning products and air fresheners accessible to children in the cabinet underneath the bathroom sink. Also there was a can of air freshener out on the bathroom counter.

Petitioner did not dispute these facts and offered no explanation.

The Petitioner certainly knew or had reason to know that her conduct in having hazardous and dangerous materials within reach of children, as established above, was in violation of the family child care home rules. Thus, the established violation was "willful noncompliance" as defined above.

Further, the violation meets the legal definition of being a substantial violation, as the fact that the hazardous and dangerous materials were within reach of children was of a nature that it necessarily jeopardized the health, safety, and care of children in the home.

Therefore, Respondent has established by, a preponderance of the evidence, a willful and substantial violation of Rule R 400.1932(2). Petitioner's violation of the above-referenced rule was both legally "willful noncompliance" and "substantial noncompliance" as those terms are defined by 2000 AACS, R 400.16001, *supra*.

Count X -R 400.1933(4)

By this charge Respondent asserts that the Petitioner failed to ensure that the water temperature at the faucet utilized by children was set at a temperature that did not exceed 120 degrees.

There was no dispute at the hearing that there was an unambiguous violation of Rule 400.1933(4). Licensing Consultant Rauch testified that she measured the water temperature from the faucet used by the children as reaching 137 degree Fahrenheit.

Petitioner did not dispute these facts and offered no explanation.

Respondent has established a violation of R 400.1933(4), as the water temperature in the Petitioner's residence was in excess of 137 degrees Fahrenheit.

This ALJ finds that the violation does legally constitute a willful violation, as the Petitioner was responsible to ensure that the water remain constantly set to a safe temperature and knew or should have known of the danger posed by the potentially scalding water.

Further, the violation meets the legal definition of being a substantial violation, as the fact that the faucet could reach such a temperature was of a nature that it necessarily jeopardized the health, safety, and care of children in the home.

Therefore, based on the record, Respondent has established by a preponderance of the evidence, a willful and substantial violation of Rule R 400.1933(4).

In addition, this is a repeat violation. On September 26, 2011, Licensing Consultant Catherine Edgar conducted a 90-day inspection of the Petitioner's child care home. Ms. Edgar cited the Registrant for eight rule violations, including failure to maintain a hot water temperature of 120 degrees or less in the child care home. On September 26, 2011, the Petitioner submitted written corrective action plan that addressed this rule violation. Petitioner failed to comply with the corrective action plan.

Count XI -R 400.1944(3)

By this charge Respondent asserts that the Petitioner failed to have a functioning fire extinguisher.

There was no dispute at the hearing that there was an unambiguous violation of Rule 400.1944(). Licensing Consultant Rauch testified that the fire extinguisher on the first floor was empty.

Petitioner did not dispute these facts and offered no explanation.

Respondent has established a violation of R 400.1944(3), as there was no properly

functioning fire extinguisher on the 1st floor of the home.

This ALJ finds that the violation does legally constitute a willful violation, as the Petitioner was responsible to ensure that there is functioning fire extinguisher and knew or should have known of the danger posed by not having a properly functioning fire extinguisher.

Further, the violation meets the legal definition of being a substantial violation, as the fact that there was no functioning fire extinguisher was of a nature that it necessarily jeopardized the health, safety, and care of children in the home.

Therefore, based on the record, Respondent has established by a preponderance of the evidence, a willful and substantial violation of Rule R 400.1933(4).

In addition, this is a repeat violation. On September 26, 2011, Licensing Consultant Catherine Edgar conducted a 90-day inspection of the Registrant's child care home. Ms. Edgar cited the Petitioner for eight rule violations, including failure to have a fire extinguisher on the second floor of the home. On September 26, 2011, the Petitioner submitted written corrective action plan that addressed this rule violation. Petitioner failed to comply with the corrective action plan.

Count XII -R 400.1945

By these charges, Respondent asserts that the Petitioner failed to conduct both fire and tornado drills as required, and as a direct corollary, written records of fire/tornado drills were not maintained and a written plan for emergencies was not established.

Further, Licensing Consultant Rauch testified that Petitioner provided documentation of recorded fire drills on 9/1/2011, 1/3/2012, 5/1/2012, 2/16/2014, 5/16/2014 and 7/2/2014. This is less frequent than the required once a month fire drills. No tornado drills were recorded.

Rule 400.1945(3) requires fire drills to be practiced at least once a month. Rule 400.1945(4) requires tornado drills to be practiced once a month from the months of April through October. Written records are explicitly required to ensure documentation to indicate that both fire and tornado are conducted as required.

Petitioner testified that she did not need emergency plans because she had experienced emergencies in the past including a fire and was able to keep her children safe. She asserted that emergency measures were discussed but provided no evidence that a written plan was established. She did not dispute the frequency of the fire drills or tornado drills testified to by Ms. Rauch.

Respondent has established violations of R 400.1945(3)&(4), as the required number of fire drills and tornado drills were not conducted. The violations of R 400.1945(3)&(4) were willful violations, as the Petitioner knew or should have known the required

number of fire drills and tornado drills.

Further, the violation meets the legal definition of being a substantial violation, as the fact that the children were ill prepared for a fire or tornado was of a nature that it necessarily jeopardized the health, safety, and care of children in the home.

Therefore, based on the record, Respondent has established by, a preponderance of the evidence, willful and substantial violations of Rule R 400.1902(2), R 400.1903(1)(f), R 400.1903(4)(6), R 400.1905(1) &(9), R 400.1907(3), R 400.1915(3)&(4), R 400.1920(5) (a); R 400.1921(1), R 400.1932(2), R 400.1933(4), R 400.1944(3), and R 400.1945(1),(3) & (4).

PROPOSED DECISION

This Administrative Law Judge proposes that the Director conclude that the Petitioner committed a willful and substantial violation of Rule R 400.1902(2), R 400.1903(1)(f), R 400.1903(4)(6), R 400.1905(1) &(9), R 400.1907(3), R 400.1915(3)&(4), R 400.1920(5) (a); R 400.1921(1), R 400.1932(2), R 400.1933(4), R 400.1944(3), and R 400.1945(1),(3) & (4) as set forth above in this Proposal for Decision.

The undersigned Administrative Law Judge proposes that the Department Director adopt the above findings of fact and conclusions of law, and take action on the Notice of Intent as deemed appropriate pursuant to the Act.

EXCEPTIONS

If a party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within twenty-one (21) 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.



Aaron McClintic
Administrative Law Judge