

BEFORE THE  
DEPARTMENT OF SOCIAL SERVICES  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against,

CATALINA M

Respondent.

Case No. 7107226001  
(License Revocation)

OAH No. N2007090248

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**PROPOSED DECISION**

This matter was heard before Gary A. Geren, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 2, 2007, in Visalia, California.

Laurie Eavenson, Staff Attorney, represented Barbara Rooney (complainant), Chief of Technical Assistance, acting on behalf of the Director of the Department of Social Services (Department).

Matthew Bahr, Attorney at Law, represented Catalina M (respondent).

The matter was submitted on October 2, 2007.

**FACTUAL FINDINGS**

1. Respondent is licensed by the Department to operate a family child care home in Corcoran, California. By virtue of her licensure, respondent must operate in accordance with the statutes and regulations governing the operation of family child care home.

2. On August 8, 2007, respondent failed to ensure that a child under her care was properly supervised, and cared for, as set forth in Factual Finding 4.

3. Respondent's son, Child A, resides in respondent's home. Child A is fourteen years old. On the date of the incident, respondent was caring for Child E, a three year-old boy.

4. The parties stipulated to the accuracy of the police report concerning the incident with respect to the following facts: While respondent was preparing lunch, Child E walked into the bedroom of Child A, who was watching television while lying on his bed. Child E asked Child A if he could "watch Barney." Child A told Child E, "Give me a kiss and I'll let you watch Barney." Child A then had Child E lay on top him, chest to chest, and Child A kissed Child E. During the kiss, Child E had his mouth open, and Child A placed his tongue inside Child E's mouth for five to eight seconds. Child A then changed the television channel so that Child A could watch Barney. After several minutes, Child A changed the channel to a program other than Barney. When Child E complained, Child A told Child E that he would change the channel back to Barney, if Child E touched Child A's penis. Child E told Child A, "No, that's nasty." Child E did not touch Child A's penis.

5. After Child E was picked up by from respondent's home by his mother, he told her about what had occurred with Child A; she then returned to respondent's home and discussed the matter with respondent. When respondent asked Child A if the events had occurred, he denied that they had. After leaving respondent's home, Child E's mother notified the police of the incident. The police went to respondent's home to investigate. They interviewed Child A, who again denied that the events occurred. However, upon further questioning by the investigating officer, Child A admitted committing the acts described in Factual Finding 4.

6. Respondent intends on putting safeguards in place, so that such an occurrence will not occur again if she is allowed to continue to operate her family care home. For example, respondent has enrolled Child A in therapy and she has scheduled his school and extra-curricular activities so that he will be away from the home while respondent provides child care.

7. These safeguards are inadequate: Child A was scheduled to have his first therapy session on the afternoon following the morning of the hearing. It is too soon to evaluate, therefore, whether Child A is likely to recommit similar acts based on any evidence that may be provided by his therapist, or whether Child A's response to therapy will yield positive results.

8. Respondent's plan to keep Child A away from his home does not provide an adequate solution. Child A will remain at the home during school holidays, summer breaks and periods of illness. As a consequence, the safety of children in respondent's care cannot reasonably be assured at this time.

9. Additionally, it is unreasonable to expect Child A's parents to attempt to keep Child A away from his home. This is particularly true while Child A and his family come to terms with the events described in Finding 4, and while Child A is undergoing therapy.

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## LEGAL CONCLUSIONS

1. Health and Safety Code section 1596.885, subdivisions (a), (b), and (c), state:

The department may deny an application for or suspend or revoke any license, registration, or special permit issued under this act upon any of the following grounds and in the manner provided in this act:

(a) Violation by the licensee, registrant, or holder of a special permit of this act or of the rules and regulations promulgated under this act.

(b) Aiding, abetting, or permitting the violating of this act or of the rules and regulations promulgated under this act.

(c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of this state.

[¶]...[¶]

2. Health and Safety Code section 1596.887, subdivision (b), states:

(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.

3. Cause to discipline respondent's license to operate a family child care home was established by a preponderance of the evidence, pursuant to Health and Safety Code section 1596.885, subdivisions (a) and (b), in that, respondent permitted the violation of California Code of Regulations, title 22, section 102423, subdivision (a)(2) (personal rights of day care children to receive safe, helpful and comfortable accommodations), to occur by reason of Factual Findings 1-5.

4. Cause for discipline of respondent's license to operate a family child care home was established by a preponderance of the evidence, pursuant to Health and Safety Code section 1596.885, subdivision (c), in that, respondent's failure to supervise Child A and Child E resulted in Child E being subjected to conduct inimical to the health, morals, welfare, and safety of individuals receiving services at respondent's facility, by reason of Factual Findings 1-5.

5. Respondent's intended safeguards are inadequate to insure further a violation of Health and Safety Code Section 1596.885, subdivisions (a)-(c) would not occur if she were permitted to continue to operate her family care home, by reason of Factual Findings 6-9.

ORDER

The license of Catalina M to operate a family child care home is hereby  
revoked.