

**BEFORE THE
DEPARTMENT OF SOCIAL SERVICES
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MARIAM EMAMI (License Revocation), and
MOSTAFA EMAMI (Exclusion Action),

Respondents.

OAH No. 2008100755

CDSS Nos. 6608284001 and
6608284001B

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PROPOSED DECISION

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 17, 2008, in Orange, California. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Sandra Okereke, Senior Staff Counsel, represented Robert Pate (Complainant).

Mr. Majid Ahmadi, advocate, represented Respondent Mariam Emami, who was also present and assisted by an interpreter of the Farsi language. No appearance was made by or on behalf of Respondent Mostafa Emami.

FACTUAL FINDINGS

1. Complainant issued the Accusation in his official capacity as the Acting Chief of Technical Assistance and Policy Branch of the California Department of Social Services (Department), pursuant to a delegation of authority from the Director of the Department.

2. Respondent Mariam Emami (Mrs. Emami) is licensed by the Department to operate a family child care home at her residence located at 6435 Shady Valley, Anaheim Hills, California (facility). The facility was initially licensed on January 9, 1985. She operates the facility herself and has no employees.

3. Respondent Mostafa Emami (Mr. Emami) is the husband of Respondent Mariam Emami, and Mr. Emami resides in the facility, as do two of their children.

4. Mrs. Emami was also personally served with a Temporary Suspension Order on October 15, 2008, effective that date at 6:00 p.m., suspending the facility from operating, pending the outcome of the hearing in this matter.

5. Mrs. Emami submitted a Notice of Defense, which requested a hearing.

6. Mr. Emami did not submit a Notice of Defense, despite being served with due notice of this proceeding in conformity with Government Code section 11505.

Drug Use at the Facility

1. While Mrs. Emami has been licensed and operated the facility, Mr. Emami has smoked opium at the facility.

2. The presence of opium at the facility, and the active use of that illegal drug by a resident of the facility, presents a condition which might endanger the children who attend the facility, within the meaning of California Code of Regulations, title 22 (regulation), section 102417, subdivision (g).

3. Mr. Emami's possession of opium at the facility, and the active use of it there, also constitutes conduct inimical to the health, morals, welfare or safety of either an individual in or receiving services from the facility, or the people of the State of California.

4. Mrs. Emami was aware of her husband's possession and use of opium at the facility. Her allowing such conduct to occur at the facility similarly constitutes conduct inimical to the health, morals, welfare or safety of either an individual in or receiving services from the facility, or the people of the State of California.

Evidence of Mitigation

5. No evidence was presented indicating that Mr. Emami has ever used opium in the presence of children at the facility.

6. Mr. Emami is not an employee of the facility or otherwise actively involved in the operation of the facility. Mr. Emami is now physically disabled from work and he spends most of his time upstairs in his room at the residence during the facility's normal operating hours. The upstairs part of the residence is not considered part of the facility. However, the parent of two children cared for at the facility testified that in the past she has seen Mr. Emami entering and leaving the facility approximately 12 times or less.

7. Mrs. Emami has no prior record of discipline by the Department. She is unaware that any parent has ever complained about her facility to the Department and she testified that she has never been sued as a result of operating the facility. A mother of two children cared for by the facility for the past few years testified that she has never seen anything inappropriate at the facility, that it is well run, and that she still takes her youngest child to the facility for care even though she is aware of the TSO and the allegations of drug use made against Mr. Emami.

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Evidence of Aggravation

8. Mr. Emami has used opium for the past several years.¹

9. Mrs. Emami initially was not candid with Department staff about her husband's drug use. The Department was first made aware of Mr. Emami's drug use by a tip from a confidential informant.² Mrs. Emami denied that her husband used opium when initially confronted about it. Only after being advised of the information from the informant did she admit that her husband used opium. The same is true of Mr. Emami, in that he initially denied to Department staff that he used opium, only to later admit it when challenged by them.

10. Mrs. Emami testified that she does not know where Mr. Emami keeps his opium supply. It was clear from her testimony that Mrs. Emami has little understanding of her husband's drug usage, in terms of frequency, quantity or duration. It was not established that Mrs. Emami has taken active efforts to stop Mr. Emami from using opium or to confirm that he has done so, other than simply asking him to stop on occasion. Based on the totality of the evidence, it was not established that Mrs. Emami would be able to effectuate her husband's cessation from opium use even if she decided to actively do so.

Evidence of Rehabilitation

11. Mr. and Mrs. Emami have been married since 1972 and they have three adult children together. They have a stable and loving family relationship. Since Mr. Emami does not work due to his disability, Mrs. Emami is the sole source of support for the family. Mrs. Emami loves operating her facility and loves being with kids.

12. No evidence was presented regarding Mr. Emami's reputation or character for responsibility, or that he has rehabilitated from his illegal drug use. Mr. Emami has so far refused to participate in a drug rehabilitation program or any medically-approved pain care, despite counseling he received while hospitalized recently. Although a recent blood test taken by Mr. Emami was negative for the presence of opium or other illegal drugs, it was not established that he has stopped using opium at the facility.

LEGAL CONCLUSIONS

1. *Burden of Proof.* Pursuant to Health and Safety Code sections 1596.887, subdivision (b), 1596.889, and 1596.8897, subdivision (e),³ the burden of proof is on Complainant, and the standard of proof is preponderance of the evidence.

¹ Mrs. Emami testified that he uses it now for pain relief from physical ailments.

² Mr. Emami had first confided about his drug use to hospital staff during a recent hospitalization for a serious medical condition.

³ All further statutory references are to the Health and Safety Code.

2. *Jurisdiction.* This matter arises under the California Child Day Care Facilities Act (the Act), section 1596.70 et seq., which governs the licensing and operation of family child care homes. The Department is the agency of the State of California responsible for licensing and inspecting such facilities. Pursuant to the Act, the Department may take disciplinary action against a licensed facility, such as suspension or revocation. Therefore, the Department has jurisdiction over Mrs. Emami's facility by virtue of her licensure. The Department may also prohibit a licensee from allowing in, or allowing contact with clients of a licensed community care facility, by any person who is not a client of a facility, and to exclude such a person from any affiliation with a Department-licensed facility, pursuant to sections 1596.871 and 1596.8897. Therefore, Mr. Emami is also subject to the Act, by virtue of his residence, and therefore presence, within a facility licensed by the Department, and his potential contact with clients of such a facility. (Factual Findings 1-6.)

3. *Cause for Discipline.* Cause was established pursuant to section 1596.885, subdivisions (a) and (b), to suspend or revoke Mrs. Emami's license to operate the facility, in that it was established that Mrs. Emami violated a regulation promulgated under the Act, i.e. regulation section 102417, subdivision (g), by allowing Mr. Emami to possess and use opium at the facility, which presented a condition that might endanger the children who attended the facility. (Factual Findings 7-10.)

4. *Cause for Discipline.* Cause was established pursuant to section 1596.885, subdivision (c), to suspend or revoke Mrs. Emami's license to operate the facility, in that it was established that her allowing Mr. Emami to possess and use opium at the facility was conduct inimical to the health, morals, welfare or safety of either an individual in or receiving services from a Department-licensed facility. (Factual Findings 7-10.)

5. *Cause for Exclusion.* Cause was established pursuant to section 1596.8897, subdivisions (a)(1) and (a)(4), to prohibit Mr. Emami's employment in, presence in, and contact with clients of any facility licensed by the Department, in that it was established that Mr. Emami violated, or aided and abetted the violation of, a regulation promulgated under the Act, i.e. regulation section 102417, subdivision (g), as described above regarding his possession and use of opium at the facility, and that such conduct would have constituted cause to discipline him had he had a license with the Department. (Factual Findings 7-10.)

6. *Cause for Exclusion.* Cause was established pursuant to section 1596.8897, subdivision (a)(2), to prohibit Mr. Emami's employment in, presence in, and contact with clients of any facility licensed by the Department, in that it was established that his possessing and using opium at a facility attended by children constituted conduct inimical to the health, morals, welfare or safety of either an individual in or receiving services from a Department-licensed facility. (Factual Findings 7-10.)

7. *Disposition.* The possession and use of an illegal drug by a resident of a facility which cares for children constitutes an unsafe and dangerous environment. The real potential exists for a child in care at the facility to accidentally find Mr. Emami's opium or come upon him when he is consuming it. No child in the care of a facility, or their parents, should ever have to bear that potential risk. The fact that actual harm to a child has not yet occurred does not limit the risk of that harm happening in the future. Mrs. Emami has allowed her husband to engage in such activity at the facility for several years. Mr. Emami has undertaken no efforts to rehabilitate his drug abuse and Mrs. Emami appears powerless to force him to do so. More concerning is Mrs. Emami's lack of understanding of the depth of her husband's drug problem. The mitigating facts presented are outweighed by the aggravating facts. Very little meaningful evidence of rehabilitation was presented. It was not established that Mr. Emami, who resides at the facility, has a reputation or character for responsibility, as required by section 1597.54, subdivision (f). Under these circumstances, the below orders are necessary to protect the public health, safety and welfare. (Factual Findings 1-18).

ORDERS

Respondent Mariam Emami's license to operate a family child care home is revoked.

Respondent Mostafa Emami is prohibited from employment in, presence in, and from contact with clients of any facility licensed by the Department, and from being a member of the board of directors, an executive director, or an officer of a licensee of any facility licensed by the Department.