

BEFORE THE
DEPARTMENT OF SOCIAL SERVICES
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	No. 579626401
)	
SUZANN BAILEY)	
2760 Butler Court)	OAH No. N-9611140
West Sacramento, California 95691)	
)	99 CDSS 02
Respondent.)	
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PROPOSED DECISION

On January 28 and 31, 1997 in Sacramento, California, Leonard L. Scott, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Steven A. Shaffer, Staff Attorney, represented the complainant.

Kristine S. Cummings, Attorney at Law, represented respondent Suzann Bailey, who was also present.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Martha Lopez, Deputy Director, Community Care Licensing Division, Department of Social Services (Department), State of California, filed the Accusation against respondent. Lopez acted in her official capacity.

II

Effective November 15, 1993, the Department of Social Services licensed Suzann Bailey (respondent) to operate a small family day care home for children with a maximum capacity of four infants, which on the license were mistakenly defined as "(children less than 3 years old)," or six children, including

respondent's children under 10 years of age, with no more than three children under age 2 years.

Since then, respondent has applied for and received an increase in her licensed capacity. Respondent is now licensed to operate a large family day care home for children with a maximum capacity of 12 children, including respondent's and her assistant's children under 10 years of age, with no more than four infants. Infants were defined on the license as under age 2 years and children as over age 2 years. The license states that: "An assistant (minimum age 14) must be present with four infants plus one or more children or with more than six children." In addition, the license states that: "Adult assistants or substitutes must submit clearance forms to licensing Department." Respondent has been licensed at all times relevant to this matter.

III

During the hearing, complainant's attorney moved to amend the Accusation on page 3, line 25, Paragraph VI-C-1 to strike the word "car." There was no objection and the motion was granted.

Also during the hearing, complainant's attorney moved to amend the Accusation on page 4, line 8, Paragraph VI-C-2 to strike "102423(a)(1)" and insert "102423(a)(2)." There was no objection and the motion was granted.

IV

Lynn Fox (Fox) is a Senior Social Worker with the Yolo County Department of Social Services (Yolo County), which pursuant to a contract with the State Department of Social Services performs licensing functions for family day care homes. Fox taught a special family day care orientation class for respondent in the fall of 1993. During the class, Fox explained the laws and regulations governing the operation of a small family day care to respondent. On October 26, 1993, respondent was issued a small family day care license.

On June 28, 1994, Fox went to respondent's facility to investigate a complaint regarding respondent's supervision of infants in her care. On June 17, 1994, respondent placed her 5-month-old daughter Elizabeth and a 4-month-old male named Sam in baby seats designed for mounting in a vehicle. She placed

them on the floor side by side to sleep while she, her 8-year-old son Aaron and a 2½-year-old child in care went swimming in her backyard pool. Respondent used a baby monitor to keep track of the infants.

Respondent returned to the house to answer the telephone in the family room. While she was on the telephone, Sam started crying. When respondent finished the telephone call, she checked on Sam. She found that he had gotten out of the car seat and fallen. Respondent said that Sam suffered a scrape on his forehead. Fox wrote that his mother said he had a red mark on his face from his forehead to his chin and a cut on his nose.

After investigating the complaint, Fox determined that this incident was an accident. She wrote a Complaint Investigation Report in which she noted that respondent failed to adequately supervise the infants because, if a problem had occurred while respondent was in the pool, she could not have heard the infant monitor over the noise of the children. Fox, in the Report, recommended that respondent leave an adult assistant caregiver in charge of any children in care in the facility when respondent was out of it. Fox gave respondent a copy of the Report and respondent made a written response on it.

The Report was the second notice to respondent of the legal requirement that an adult caregiver must always be present when children in care were present in respondent's facility. The first notice of this requirement was given to respondent during the orientation. Respondent admitted knowing that an adult is a person 18 years old or older.

As a licensee, respondent is required to know and comply with the statutory and regulatory requirements which govern the operation of a family day care home for children. Respondent said she read and signed the certification that she would comply with the laws and regulations, which is in her application for a license.

On or about January 16, 1995, respondent applied for an increase in her licensed capacity to a maximum of 12 children, with not over 4 of them infants, as more fully explained above. On February 17, 1995, during the application process, Fox went over the laws and regulations which govern the operation of a large family day care with respondent. Fox explained the limitations regarding numbers of children and numbers of infants,

and the requirement for an assistant caregiver when the totals exceeded certain limits. The fire inspection clearance was received by Yolo County on April 19, 1995, and the license with the increased capacity was approved.

V

Garnette Brow's (Brow) son Dalton attended day care at respondent's facility during the period from August to December of 1994 and in February of 1995. Dalton is now 3½-years-old.

During the period of time that Dalton was attending respondent's day care, Brow attended an orientation class regarding the requirements for operation of a small family day care facility. During that time, Brow occasionally noticed what seemed an excessive number of infants under two years of age in respondent's facility. Brow asked respondent about it and respondent told her that some of the infants were leaving shortly so she did not have too many all day.

In late February of 1995 respondent did not work for several days after her tonsils were removed and her mother cared for the children in the facility. Brow became concerned regarding the quality of care Dalton was receiving. She was concerned because on more than one occasion his diaper was soiled and had been for some time when she arrived to pick him up in the evening. She would take him home and have to scrape his behind to clean it. She could not clean his bottom with just a wet wipe. Brow informed respondent about the problem and respondent replied that the children were receiving adequate care and, if such occurred, it was on only one or two occasions. As a result of this, Brow removed Dalton from respondent's facility in March of 1995.

VI

On about March 1, 1995, before approval of respondent's application for an increase in the capacity of her facility to 12, Yolo County received a complaint that respondent was consistently operating in excess of her then licensed capacity of 6.

On March 13, 1995, Fox made an unannounced visit to respondent's facility to investigate. Respondent was there alone with five infants under 2 years of age and a small child aged 3½ years. The infants ages were 22 months, 15 months, 14 months, 13

months, and 5 months. Fox cited respondent for exceeding her licensed capacity. Respondent admitted to Fox and at the hearing that she had knowingly exceeded her licensed capacity regularly during the period of time preceding March 13, 1995. She explained it by saying that she needed the money. Respondent testified that this event made her realize that she must comply with the law.

On April 13, 1995, Fox made an unannounced follow-up inspection and found that respondent was within her licensed capacity.

VII

[OMITTED TEXT]

VIII

[OMITTED TEXT]

IX

On July 17, 1996, Strange left Child #2 at respondent's licensed facility in the morning on her way to work. At about 2 p.m., she stopped by respondent's facility to check on Child #2. Respondent was not present. Respondent had left her facility at about 1 p.m. to take the older boys to a special program at the park. Child #1 was left in the facility alone with three infants of less than a year of age and about four or five other infants and small children who ranged in age from 1½ years to a little over 2 years. While respondent was gone, Child #1 was to watch the children in care, plus clean the kitchen and bathroom.

When Strange arrived, Child #1 was mopping the kitchen. The three smaller infants were asleep in one room and the others in care were asleep in another. Child #1 said she had to get the mopping finished. Child #1 told Strange that respondent was at the park with some older boys and that Child #2 was asleep in a bedroom with a bottle to drink from. Strange asked what Child #1 meant because Child #2 could not hold a bottle. Child #1 responded that she had propped the bottle so Child #2 could drink from it. Strange told her not to do it again.

Strange went to the bedroom where Child #2 and two other infants were asleep. Child #2 was strapped in an infant's

car seat and covered with a heavy blanket. There was a bottle, with the nipple pointing down, wedged between his shoulder and the seat. Child #2 was drenched with sweat and infant formula. Strange unstrapped Child #2 and picked him up. Under him were two small toys. His diaper needed changing.

Strange took Child #2 back into the main day care area and changed his diaper. While she worked, respondent arrived at about 2:15 p.m. with the older boys. Strange was extremely upset and shaking because her infant son had been placed in a closed bedroom without supervision and in a position where he could have choked on the bottle.

Respondent admitted that on July 17, 1996, she took three older children, including her son, to a special program and left Child #1 alone in her facility with seven or eight infants and children for about an hour and a half. She admitted that she had also done this on about seven previous occasions. Respondent admitted that she knew Child #1 was underage and did not have current C.P.R. and first aid certifications when she did this.

Respondent agreed that when she returned, Strange was already there. Respondent said that at the time, she did not think she was jeopardizing the infants and children she left with Child #1, but with hindsight she understands there could have been an unforeseen emergency such as a fire. Respondent admitted she knew she was violating the regulations when she left Child #1 in charge. Respondent said this was the last time she left Child #1 alone in her facility with infants and children in day care.

X

Child #1 was born on March 5, 1979. She has been a baby sitter since she was about 10 years old and took a pediatric C.P.R. class in 1993 when she volunteered in a child care program operated by the City of West Sacramento. She enjoys working with small children. She worked for respondent as an assistant care provider during the summers of 1995 and 1996. Her pediatric C.P.R. certification expired in about June of 1995 and she did not renew it. When Child #1 started to work for respondent, she told respondent her pediatric C.P.R. certification had just expired. Respondent did not provide any training or instructions to Child #1 regarding how to handle an emergency.

Child #1 worked in the afternoons at respondent's facility during the summer of 1996. In addition, she worked in

the morning while the other assistant caregiver was on vacation. She helped supervise the children in day care, cleaned up after lunch, helped prepare the afternoon snack and supervised the children as they ate it.

Starting about the second week of June in 1996, respondent would take the older boys to a recreation program in the park in the afternoon and pick them up when it was over. Respondent was gone from her facility for about 10 minutes while taking them and again while picking them up. Respondent took the boys to the program one or two times a week for a total of about five to six times. During those periods of time, Child #1 was left in respondent's facility to supervise the children and infants in care. Those children and infants ranged in age from about 5 months to 2 years and included the following: Kyle, age about 2 years; Zackery, age about 2 years; Joseph, age about 2 years; Elizabeth, respondent's daughter, age about 2 years; Stephanie, age about 1½ years; Justine, an infant of less than a year; and occasionally other children, including Child #2, an infant of about 4 months. On one occasion when respondent was gone for about a half hour, Child #1 had her friend Daniel, a male age 16 years, come over to help her.

Respondent admitted that on about seven occasions for short periods of time she left Child #1 alone in her facility with the infants and children who were there for day care.

XI

[OMITTED TEXT]

Fox and another social worker made an unannounced visit to respondent's facility to investigate the complaint on August 8, 1996. They interviewed respondent, Child #1, and Natasha, another assistant caregiver. They learned that Child #1 had been left alone in respondent's facility with eight infants and small children on July 17, 1996, for over an hour. Child #1 told them that she was 17 years old and her C.P.R. and first aid certifications had expired.

[OMITTED TEXT]

In a written response dated August 10, 1996, respondent admitted leaving 17-year-old Child #1 in charge while she was gone and admitted knowing that Child #1 did not have current C.P.R. and first aid certifications. Respondent justified her

actions by stating that Child #1 was an experienced baby sitter, mature for her age, and had those certifications in the past but they had expired.

XII

Respondent testified that she and her assistants operate her facility with a structured program each day. They feed the children and have free play until 8:30 a.m., then they have the infants and small children nap while the older ones play. They serve a snack at 10 a.m., then the infants play inside and the others play outside. At about 11:30 a.m., they prepare the food for lunch and wash the children. Lunch is served at about noon. The infants and children nap from about 1 p.m. until about 3 p.m. when a snack is served. After the snack, they play again until picked up by their parents.

Respondent stated that many of the children have attended her facility since they first attended day care and some have been with her for years. She said that they love each other and are part of each others extended families. Respondent stated that in her opinion, she provided excellent care to all of the children in her day care facility.

Respondent noted that she had known Child #1 for about five years and Child #1 was an experienced child care worker with experience as a baby sitter and in the program operated by the city.

Respondent stated that she no longer leaves her facility in the charge of a minor. She said she regrets not strictly adhering to the regulations. She would like to be allowed to keep her license and said she would accept and comply with any terms and conditions of probation.

XIII

Fox stated that respondent's facility was clean and equipped with appropriate toys for the children.

XIV

Terri Lewis (Lewis) testified all three of her children have been clients in respondent's day care at various times. The oldest, Catherine, now 13 years of age, was there some during the summer of 1995. The second one Scott, now 9 years of age, was

there some during the summers of 1995 and 1996. The youngest Stephanie, now 2 years of age, has gone there since she was 6 or 7 months of age. Lewis is happy with the quality of respondent's day care services and with how respondent keeps her informed about Stephanie's day. Lewis has known Child #1 since Child #1 was about one or two years old. Lewis has had Child #1 baby sit her children. She said Child #1 is very mature and responsible.

Larissa Calu (Calu) has taken her son Zack to respondent's facility for day care since he was about two months of age. He is now 2 years, 11 months old. Calu and Zack both like and trust respondent. He is close to respondent. He has learned much while going to her facility such as his ABC's. Calu is happy with the quality of respondent's day care services. She said that Child #1 has a good relationship with the children.

Jennifer Middleton (Middleton) has taken her son Kyle to respondent's facility for day care since he was about 6 months of age. He is now about 3 years old. Middleton said that respondent is very caring and nurturing with the children and Kyle loves respondent. Before taking Kyle to respondent's, she took him to another day care facility and was unhappy with it. She said that respondent keeps her facility nice and clean, and provides safe, healthful care.

Michelle Middleton is the aunt of Kyle. She is a deputy sheriff with the Sacramento County Sheriff's Department. She has occasionally picked Kyle up at respondent's facility. It has always been clean and orderly. Kyle seems relaxed with respondent, hugs her and waves goodbye.

Donna Justice (Justice) has two children she takes to respondent's. Joseph, age 3 years, has gone to respondent's since May of 1995. Samantha, age 6 months, has gone there for about three months. She previously had Joseph at another day care facility and was very unhappy with it. While searching for a good day care facility, she visited a number of facilities that were not nice and not clean. She likes respondent's because it is both nice and clean. She is pleased that respondent has the infants sleep in a different room than the toddlers because it protects them. She said that respondent provides great care and the children are safe there. Her children relate well to respondent and Joseph enjoys going there. She likes the way respondent keeps her informed about what her children are doing. She noted that Child #1 is mature acting and great with small children.

Each of these mothers commented that if respondent's facility is closed it would be very difficult for them to find an alternative day care facility that would provide anywhere near the quality of care provided by respondent.

XV

Although respondent maintains a very nice, clean facility, she has committed serious violations, been warned or cited, and then repeated the same and similar violations. She has shown a disregard for the legal requirements almost since she was first licensed, with the violations continuing through the late summer of 1996. Her history makes it difficult to give full faith to her avowals that she has learned her lesson and will strictly comply with the laws and regulations which govern the operation of a family day care facility, especially given her continued violations after she was warned about them in the past.

DETERMINATION OF ISSUES

I

Cause for discipline of respondent's license was established for violation of Health and Safety Code section 1596.885 in conjunction with Title 22, California Code of Regulations, section 102393, regarding the violation alleged in Paragraphs V and VI of the Accusation, as found in Findings V, VI, VIII, IX, X and XI.

II

Cause for discipline of respondent's license was established for violation of Health and Safety Code section 1596.885 in conjunction with Title 22, California Code of Regulations, section 102416.5, regarding the violation alleged in Paragraph VI-A of the Accusation, as found in Findings V, VI, IX, X and XI.

III

Cause for discipline of respondent's license was established for violation of Health and Safety Code section 1596.885 in conjunction with Title 22, California Code of Regulations, section 102417(a), regarding the violation alleged in Paragraph VI-B of the Accusation, as found in Findings IX, X and XI.

IV

Cause for discipline of respondent's license was established for violation of Health and Safety Code section 1596.885 in conjunction with Title 22, California Code of Regulations, section 102423(a)(2), regarding the violation alleged in Paragraph VI-C of the Accusation, as found in Findings VIII, IX and XI.

ORDER

The license to operate a large family day care home which was issued to respondent Suzann Bailey is revoked pursuant to Determination of Issues I through IV, separately and for all of them.