

BEFORE THE  
DEPARTMENT OF SOCIAL SERVICES  
STATE OF CALIFORNIA

In the Matter of the Amended Accusation and	)	
Employee Exclusion Action of:	)	
	)	DSS No. 09-709719001
DANIEL KEITH BERSET,	)	
	)	OAH No. N-1997080281
	)	
Respondent.	)	99 CDSS 03
_____	)	

PROPOSED DECISION

On September 17, 1997, in Sacramento, California, Ann E. Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Barbara G. Elbrecht, Staff Attorney, represented the Petitioner.

Daniel Keith Berset, Respondent, appeared in propria persona.

Evidence of the Department of Social Service's jurisdiction over this matter and evidence of a stipulation between the parties as to disposition of this matter was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Complainant, Martha Lopez, made and filed the Amended Accusation/Employee Exclusion Action (hereinafter "Accusation") in her official capacity as Deputy Director, Community Care Licensing Division, Department of Social Services, State of California.

II

Pursuant to the California Community Care Facilities Act (Health and Safety Code, division 2, Chapter 3, section 1500 et seq.), the Department of Social Services (hereinafter "Department") is responsible for the licensure of group homes and for the exclusion of individuals from such facilities. Pursuant to Health and Safety Code section 1558, the Department may exclude specified individuals from licensed facilities on the grounds that an individual has engaged in conduct which is inimical to the health, morals, welfare, or safety of residents in care of any facility licensed by the Department in community care in this State.

### III

Daniel Keith Berset, respondent herein, was employed in June of 1997, by the New Morning Youth and Family Services, the corporation which is licensed to operate a group home facility doing business as New Morning Children Shelter, 3100 Spanish Ravine Road, Placerville, California (hereinafter "facility"). On June 24, 1997, Mr. Berset was excluded from the facility by an Order To Licensee/Facility of Immediate Exclusion From Facility. Mr. Berset timely filed a Notice of Defense, appealing the Exclusion Order and requesting a hearing pursuant to Health and Safety Code section 1558(b). The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et. seq.

### IV

The Accusation was amended at the hearing in the following particulars: Paragraph VI, allegation A is stricken along with all three subparts to allegation A. The remaining allegations are relettered changing allegation B to A , C to B, D to C and E to D. No evidence, other than the admissions of Mr. Berset, was received as to the allegations enumerated in the Amended Accusation.

### V

On January 4, 1994, Mr. Berset's license to practice in the State of California as a registered nurse, issued by the Board of Registered Nursing, was revoked by a Decision and Order of Stephen J. Smith, Presiding Administrative Law Judge, in order No. 93-159; OAH No. N-42907. On May 4, 1994, the Board of Registered Nursing, Department of Consumer Affairs, adopted the Decision. The decision was based upon Mr. Berset's drug-related misconduct.

### VI

On or about February 16, 1993, Mr. Berset was convicted of a violation of California Vehicle Code, section 14601.1(a) (driving with a revoked license) and section 23225 (open container).

### VII

On or about October 11, 1991, Mr. Berset was convicted of a violation of California Vehicle Code, section 23152 (driving under the influence).

## VIII

Mr. Berset admitted the allegations contained in the Amended Accusation and set forth in Findings of Fact V through VII, inclusive. Mr. Berset does not contest the Department of Social Services' order which excludes him from any facilities licensed by the Department. The parties stipulate that the Administrative Law Judge may issue the Decision and Order which follow in the Determination of Issues and Order. The parties stipulate that the Board may adopt the Decision and Order. Based upon the stipulation, the parties waived any further hearing on the Accusation.

### DETERMINATION OF ISSUES

#### I

The acts set forth in Findings of Fact V through VII, inclusive, constitute conduct which is inimical to clients in any facility licensed by the Department or to the people of this State, and are in violation of Health and Safety Code section 1558(a)(2) and (4). Individuals with substance abuse problems are not fit for employment in facilities housing children or dependent adults. An employee of such a facility must exercise patience, self control, discretion and good judgment at all times. The health and safety of facility residents is dependent upon employees exercising these skills. It is axiomatic that those under the influence of intoxicating substances are unable to exercise these skills.

### ORDER

The June 24, 1997, Order For Immediate Exclusion From Facility is sustained. Daniel Keith Berset is excluded from any facility licensed by the Department of Social Services.

Pursuant to the stipulation signed by the parties on September 17, 1997, Daniel Keith Berset retains the right to petition the Department to withdraw its order excluding him from facilities licensed by the Department. Mr. Berset's right to petition the Department shall not be effective until July 1, 2001. The Department retains the right to deny or reject Mr. Berset's petition. The review of the petition shall be performed by the Department's district office staff. If the district office denies or rejects the petition, no further review shall be granted by the Department. Mr. Berset shall not have the right to an administrative hearing or a civil action in the matter of the denial or rejection of the petition.

Pursuant to the stipulation, if Mr. Berset's petition is rejected or denied by the Department, Mr. Berset shall not have the right to petition the Department again until one year has passed from the effective date of the rejection or denial. Mr. Berset stipulates that he has waived any further administrative proceedings and waives the right to seek Superior Court or other judicial review of matter number DSS No. 709719001.