

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

In the Matter of:)	No. 6796338001B
)	
MAMIE LEE BIGGERS and WANDA IBARRA)	OAH No. L-9701002
dba Biggers Supportive Care Home)	
1720 Garden Drive)	99 CDSS 04
Wildomar, CA 92404)	
)	
LEON IVAN BIGGERS)	
4637 Jackson Street, #47)	
Riverside, CA)	
)	
Respondents.)	
)	

PROPOSED DECISION AFTER RECONSIDERATION

On February 5 and 6, 1997, in Riverside, California, Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Kelly Hargreaves, Senior Staff Attorney, represented complainant.

Respondents Mamie Lee Biggers and Wanda Ibarra were present and represented by Jess Biggers, the son of Mamie Biggers and Wanda Ibarra's brother. Respondent Leon Ivan Biggers was present and represented himself.

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

On February 26, 1997, pursuant to Government code section 11521(b), the case was remanded by the Department of social Services for reconsideration by the Administrative Law Judge, without taking additional evidence. Complainant gave notice to all respondents. The record was re-opened, and Complainant's letter remanding the case, dated February 25, 1997, was marked Exhibit 7. Thereafter, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Martha Lopez filed Accusation No. 6796338001B, dated December 4, 1996, and First Amended Accusation, dated January 17, 1997 against Mamie Lee Biggers (respondent Mamie Biggers) and Wanda Ibarra (respondent Wanda Ibarra), dba Biggers Supportive Care Home, in her official capacity as Deputy Director, Community Care Licensing Division, Department of Social Services, State of California (Department). Ms. Lopez also filed the First Amended Accusation against Leon Ivan Biggers (respondent Leon Biggers), a facility employee.

On December 4, 1996, Ms. Lopez issued an Order suspending the license issued to respondents Mamie Biggers and Wanda Ibarra. Respondent Mamie Biggers filed a Notice of Defense, dated December 16, 1996, requesting a hearing in this case.

The matter was set to be heard on January 14 and 15, 1997. On January 10, 1997, respondent Mamie Biggers requested a continuance of the hearing. Without objection by the Department, respondent Mamie Biggers having waived her right to have an evidentiary hearing within 30 days of receipt of the Notice of Defense by the Department, the continuance was granted, and the matter was reset for hearing on February 5 and 6, 1997.

II

On March 10, 1994, the Department issued facility license number 366400038 to respondents Mamie Biggers and Wanda Ibarra to operate an adult residential home doing business as Biggers Supportive Care Home located at 1720 Garden Drive, San Bernardino, California (facility). On the face of the license, it states "licensee prefers to serve mentally disordered clients, 18 through 59 years of age". All of the residents of the facility are female.

III

Community care facilities are a valuable resource in meeting the needs of certain classes of individuals who do not live in a traditional family setting or who are unable to live independently. Examples of individuals benefitting from these facilities include disable and/or elderly adults.

The primary purpose of residential care facility legislation is to move certain classes of individuals with special needs out of institutions and into "normal" family-like surroundings. The residential care facility provides alternative family structure and the assistance, encouragement and companionship necessary to help group home residents realize their potential. McCaffey v. Preston (1984) 154 Cal.App.3d 422, 432.

Residents of community care facilities are often vulnerable to abuse by staff members or other residents. For this reason, these residents have certain enumerated personal rights, including, but not limited to, the right to be accorded dignity in his or her personal relationships with staff and others, the right to safe, healthy and comfortable accommodations, the right to be free from corporal or unusual punishment, the right to be free from the infliction of pain, humiliation, intimidation or other actions of a punitive nature.

IV

Respondent Mamie Biggers is the mother of respondents Wanda Ibarra and Leon Biggers, both adults.

Though she has been licensed to operate the facility since 1994, respondent Mamie Biggers has operated licensed community care facilities at other locations, serving mentally ill or developmentally disabled clients, for almost 20 years. Respondent Wanda Ibarra has worked with her mother in her licensed adult residential facilities for at least the last ten years.

V

Between 1977 and 1986 respondent Mamie Biggers operated a licensed community care facility located at 10888 Maple Street, Bloomington, California.

[OMITTED TEXT]

On December 3, 1996, an LPA made an unannounced case management site visit to respondent Mamie Biggers' Maple Avenue facility. Respondent Mamie Biggers informed the LPA that she was continued to operate the facility with the assistance of her daughter, respondent Wanda Ibarra. In the licensing report,

dated December 3, 1996 (Exhibit 6), the LPA reported "Mrs. Biggers also stated her son Leon Biggers is no longer involved with the operation of the facility". She made no representation regarding his future involvement in the operation of the Maple Avenue facility. Respondent Mamie Biggers executed this document.

[OMITTED TEXT]

VI

During the period that the facility has been licensed by the Department, respondent Leon Biggers worked as an employee of the facility. He worked as a driver and yard maintenance man; on some occasions, he helped out at the facility, watching the clients when respondent Mamie Biggers and/or respondent Wanda Ibarra went shopping; and he cooked meals. On a regular basis, respondent Leon Biggers spent the night at the facility on Friday nights. Respondent Leon Biggers admitted that his mother "always told him not to have sex with his female clients".

VII

Client #1 is a female, who is 27 years of age and suffers from cerebral palsy. She is developmentally disabled, having suffered brain damage at birth. She testified as a witness in this case. Having had an opportunity to hear this witness testify and observe her demeanor, it is clear that she functions below average and is incapable of taking care of her basic needs without supervision. She does not handle her own money and has unreasonable fears, such as fear of the dark. She understands that she is incapable of meeting the needs of a child.

Between April 1990 and November 1996, Client #1 lived in licensed residential facilities operated by respondent Mamie Biggers. Initially, she moved into the facility located on Ninth Drive facility where she lived until November 1996. Client #1 understands that she is in a residential care facility because she cannot take care of her basic personal needs without supervision and that respondents Mamie Biggers and Wanda Ibarra had a duty to protect the care for her. She knows that respondent Leon Biggers was there to help her care providers, but he was not her primary care provider.

Respondents Mamie Biggers and Wanda Ibarra took care of her during the time that she was a resident of respondent Mamie Biggers' facilities. Respondent Leon Biggers worked at the facility of Client #1's residence. All respondents were aware of Client #1's level of competency and her inability to take care of her basic needs without supervision.

VIII

Between June 1995 and November 1996, respondent Leon Biggers engaged in sexual intercourse with Client #1 at the facility on a regular basis. Respondent Leon Biggers admits that he had sexual intercourse with Client #1.

The first time that he approached her, respondent Leon Biggers was in his mother's licensed residential facility located on East 9th Street (Highland, California), the resident of Client #1. At the time, she was 20 years old. He was alone with the clients because respondents Mamie Biggers and Wanda Ibarra had gone shopping. He and Client #1 were playing a board game when he asked her if she wanted to make love. Though she did not understand his question, and she said "no". Nevertheless she engaged in sexual intercourse with him.

Client #1 testified that there were other times that she had sexual intercourse with respondent Leon Biggers against her will. For example, while respondent Mamie Biggers was in the hospital and her granddaughter cared for the clients, respondent Leon Biggers came into the bedroom of Client #1, awakened her and told her to come into the den. Client #1 followed his instructions, and they had sexual intercourse on that and other Friday nights.

Respondent Leon Biggers told her not to tell anyone. Client #1 was afraid of respondent Leon Biggers because of "his tallness"; physically, he is six feet four inches and approximately 220 pounds, and, normally she is five feet four inches and 115 pounds. She was afraid to tell respondent Mamie Biggers and/or respondent Wanda Ibarra about her sexual relationship with respondent Leon Biggers. Client #1 had been hit and/or shoved by respondent Wanda Ibarra. After she had sexual intercourse with respondent Leon Biggers, she was fearful that she would be in trouble with respondents Mamie Biggers and Wanda Ibarra.

Nevertheless, Client #1 admitted that if she had informed respondents Mamie Biggers and/or Wanda Ibarra that either woman would have protected her from respondent Leon Biggers.

IX

During the time that Client #1 was a resident of the facility, Client #1 had no relationships with others outside the facility. She had no family or other visitors; she did not attend school or have a job. No evidence was offered to establish that she had regular contact with men, other than respondent Leon Biggers.

X

As a result of her sexual relationship with respondent Leon Biggers, Client #1 became impregnated in November 1995. When respondent Wanda Ibarra suspected that Client #1 might be pregnant she took Client #1 for a pregnancy test and thereafter for an abortion. Client #1 had the abortion.

It is not clear whether respondents Mamie Biggers and/or Wanda Ibarra knew about the sexual relationship between Client #1 and respondent Leon Biggers prior to the first pregnancy.

After the first pregnancy and prior to the second one, respondent Wanda Ibarra asked her who the father of the child was. Initially, Client #1 lied. During the discussion, after respondent Wanda Ibarra asked her several times, Client #1 informed her that the father of the child was respondent Leon Biggers. On the same date, respondent Wanda Ibarra informed respondent Mamie Biggers.

XI

After learning that respondent Leon Biggers had a sexual relationship with Client #1, neither respondent Mamie Biggers nor respondent Wanda Ibarra took steps to protect Client #1. They continued to allow respondent Leon Biggers to work at the facility and spend the night on a regular basis. Neither discussed the issue with him until after Client #1 became impregnated the second time. Neither respondent Mamie Biggers nor respondent Wanda Ibarra took steps to assure that the sexual

intercourse was consensual, that he was using a condom, that he had been tested for AIDS or that Client #1 understood the consequences of her action.

XII

After the first pregnancy, respondent Leon Biggers continued to have sexual intercourse with Client #1. As a result, she was impregnated by respondent Leon Biggers in June 1996.

XIII

Neither respondent Mamie Biggers nor respondent Wanda Ibarra reported the pregnancies to Client #1's physician.

XIV

Neither respondent Mamie Biggers nor respondent Wanda Ibarra reported the sexual relationship between respondent Leon Biggers and Client #1 within the Department's next working day by telephone and/or within seven working days in writing. Neither respondent Mamie Biggers nor respondent Wanda Ibarra reported Client #1's pregnancies within the Department's next working day by telephone and/or within seven working days in writing.

XV

During the period of licensure, neither respondent Mamie Biggers nor respondent Wanda Ibarra submitted fingerprints for respondent Leon Biggers, an adult who provided care and supervision to clients, was regularly present in and employed at the facility.

XVI

As set forth in Findings III, IV, V, VI, VII, VIII, IX, X, XI, XII and XVIII, between June 1995 and November 29, 1996, respondents Mamie Biggers and Wanda Ibarra failed or refused to ensure the personal rights of Client #1 were not violated and to provide the care and supervision appropriate to meet the needs of Client #1.

XVII

As set forth in Findings V, VI, VII, VIII, IX, X and XII, between June 1995 and November 29, 1996, respondent Leon Biggers violated the personal rights of Client #1.

XVIII

Respondents Mamie Biggers and Wanda Ibarra have engaged in conduct and operated their facility in a manner that is 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 in that respondents Mamie Biggers and Wanda Ibarra knew or should have known of the sexual activities between respondent Leon Biggers and Client #1 and failed or refused to protect Client #1, as set forth in Findings III, IV, V, VI, VII, VIII, IX, X, XI, XII and XVI.

DETERMINATION OF ISSUES

I

Pursuant to Health and Safety Code section 1550, cause exists to discipline respondents Mamie Biggers and Wanda Ibarra's license in that they failed to ensure that the personal rights of Client #1 were not violated and to provide care and supervision appropriate to meet the needs of Client #1 in violation of Sections 80072, 80078(a) and 85078 of Title 22 of the California Code of Regulations by reason of Findings III, IV, V, VI, VII, VIII, IX, X, XI, XII, XVI and XVIII.

II

Pursuant to Health and Safety Code section 1558, cause exists to exclude respondent Leon Biggers from facilities licensed by the Department in that respondent Leon Biggers violated the personal rights of Client #1 in violation of Section 80072 of Title 22 of the California Code of Regulations by reason of Findings III, V, VI, VII, VIII, IX, X, XII and XVIII.

III

Pursuant to Health and Safety Code section 1550, cause exists to discipline respondent Mamie Biggers and Wanda Ibarra's license in that they failed to report: (1) the sexual

relationship between Leon Biggers and Client #1, and (2) Client #1's pregnancies in violation of Section 80061(b)(1)(C) of Title 22 of the California Code of Regulations by reason of Findings III, IV, VI, VII, VIII, IX, X, XII and XIV.

IV

Pursuant to Health and Safety Code section 1550, cause exists to discipline respondent Mamie Biggers and Wanda Ibarra's license in that they failed to report Client #1's pregnancies to her physician in violation of Section 85075.3 of Title 22 of the California Code of Regulations by reason of Findings III, IV, VI, VII, VIII, IX, X, XII and XIII.

V

Pursuant to Health and Safety Code section 1550, cause exists to discipline respondent Mamie Biggers and Wanda Ibarra's license in that they failed to submit fingerprints for respondent Leon Biggers in violation of Health and Safety Code section 1522 and Section 80019 of Title 22 of the California Code of Regulations by reason of Findings VI and XV.

VI

Pursuant to Health and Safety Code section 1550(c), cause exists to discipline respondent Mamie Biggers and Wanda Ibarra's license in that they operated the facility in a manner which is inimical to the health, morals, welfare or safety of an individual in and receiving services from the facility and the people of the State of California by reason of Findings III, IV, V, VI, VII, VIII, IX, X, XI, XII, XVII and XIX.

VII

[OMITTED TEXT]

VIII

Complainant established that in order to protect the people of the State of California it will be necessary to revoke the license of respondents Mamie Biggers and Wanda Ibarra to operate the facility and to exclude respondent Leon Biggers from facilities operated by the Department. However, Client #1

continues to reside in a facility licensed by the Department, and it is unlikely that respondent Leon Biggers is the father of the child she is carrying. The child is not due for several months.

If it is established, pursuant to the Uniform Parentage Act (Family Code section 7600 et. seq.), that respondent Leon Biggers is the baby's father and a Superior Court Judge orders visitation, it will be necessary for the Department to establish terms and conditions for visitation.

ORDER

I

License number 366400038 issued to Mamie Lee Biggers and Wanda Ibarra is revoked.

II

Leon Ivan Biggers is excluded from employment in, presence in or contact with clients of all facilities licensed by the Department of Social Services, subject to any court order for visitation.