

BEFORE THE
DEPARTMENT OF SOCIAL SERVICES
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	No. 7897003003
)	
TRACY D. DeSOMERS)	OAH No. N-9703112
aka Tracy Denise Riley)	
P.O. Box 19691)	99 CDSS 06
South Lake Tahoe, CA 96151)	
)	
)	
Respondent.)	
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PROPOSED DECISION

On April 2, 1997, in South Lake Tahoe, California, John D. Wagner, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Complainant was represented by Kelly Hargreaves, Senior Staff Attorney, Department of Social Services.

Respondent represented herself.

Complainant's motion to amend a portion of the Accusation was granted, as set forth in Exhibit 1.

Evidence was received and the record remained open for the receipt of documentary evidence. Said evidence was received and marked Exhibit 3. The record was closed and the matter was submitted on April 14, 1997.

FINDINGS OF FACT

I

Complainant Martha Lopez made the Accusation in her official capacity as Deputy Director, Community Care Licensing Division, Department of Social Services, State of California.

II

Respondent Tracy D. DeSomers, also known as Tracy Denise Riley, was employed full-time as a nursing assistant by Judith V. Brown, who is licensed by the Department to operate a residential care facility for the elderly, doing business as Tahoe Manor at 586 Glorene, South Lake Tahoe, California.

III

On or about May 30, 1996, respondent was convicted, on her plea of guilty, in the El Dorado County Municipal Court (Case No. SL95M01078), of violating section 273a(b) (child endangerment) of the Penal Code. This crime was a misdemeanor. As a result of her conviction, respondent was sentenced to serve three days in the county jail and was placed on summary probation for two years with terms and conditions requiring her to completely abstain from narcotics and alcohol.

The facts and circumstances surrounding this conviction are that on or about November 20, 1995, respondent was living with her four minor children. She returned in the evening and entered into a drunken rage with her 14-year-old son. She cursed her son with vulgar language because he did not get rolling paper for a marijuana cigarette quickly enough to satisfy respondent. Respondent and her children - approximate ages 14, 8, 5, and 1 - were in the midst of a move and were temporarily occupying the home. In the living room of the home, which was occupied by respondent's children and a visiting child, there was marijuana and drug paraphernalia on a coffee table.

IV

As a result of the above conviction, respondent was terminated from her position as a nursing assistant at Tahoe Manor on December 3, 1996. Thereafter, respondent was denied a criminal records exemption based on her failure to provide substantial and convincing evidence that she was of such a character as to justify an exemption.

V

Respondent's conduct that led to her conviction was inimical to the health, morals, welfare, or safety of the people of the State of California because she endangered her own

children and one other child in her care as a result of her intoxicated state when no other adult was present.

VI

Respondent is a drug and alcohol addict. After her arrest in November 1995, she did not discontinue abuse of alcohol. In approximately May 1996, respondent entered a drug and alcohol abuse therapy program, which included two and one-half weeks of in-patient therapy. After her in-patient therapy, respondent continued with 90 out-patient meetings in 90 days. Thereafter, she attended approximately two AA or NA meetings per week. At the present time she is attending meetings approximately once a month. Respondent has been clean and sober since she entered the in-patient program, approximately 11 months.

Respondent is not yet rehabilitated and of such good character as to justify her employment, residence, or presence in a residential care facility for the elderly or any other facility licensed by the Department. She is still on probation. Not enough time has elapsed since respondent has become clean and sober to indicate substantial rehabilitation. When respondent was hired by Tahoe Manor, she did not reveal her conviction. The statement she signed regarding prior criminal convictions was checked "No."

DETERMINATION OF ISSUES

I

Cause exists for prohibiting respondent from employment in any facility licensed by the Department, from presence in any facility licensed by the Department, and from contact with clients of any facility licensed by the Department, pursuant to sections 1569.58(a)(3) and 1569.17(c) of the Health and Safety Code, and section 87219, title 22, of the California Code of Regulations, by reason of Findings III, IV, and V.

II

Respondent's exemption request should be denied pursuant to Determination of Issues I and Findings of Fact V and VI.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The criminal exemption request of Tracy D. DeSomers is denied. Tracy D. DeSomers shall be prohibited from employment in any facility licensed by the Department, from presence in any facility licensed by the Department, and from contact with clients of any facility licensed by the Department.