

BEFORE THE
DEPARTMENT OF SOCIAL SERVICES
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against and Temporary Suspension) Case No. 549630601
Prior to Hearing of:)
) OAH No. N-9702105
 DODI ECKARD)
 dba Walnut Cove Day Care) 99 CDSS 08
 3420 E. Douglas)
 Visalia, CA 93292)
)
 Respondent.)
_____)

PROPOSED DECISION

On March 10 and 11, 1997, Frank Britt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter at Visalia, California.

Michael B. Franklin, Senior Staff Counsel, Department of Social Services, State of California, represented the complainant.

Dodi Eckard (hereinafter "respondent"), appeared in person and represented herself.

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

FINDINGS OF FACT

I

Martha Lopez, Deputy Director, Community Care Licensing Division, Department of Social Services (hereinafter "the Department"), State of California, filed the Accusation and the First Amended Accusation in her official capacity, on February 5, 1997 and February 19, 1997, respectively.

On February 5, 1997, Martha Lopez, in her capacity as Deputy Director of the Department's Community Care Licensing Division, issued a Temporary Suspension Order (hereinafter "TSO") against respondent's licensed family day care home. The TSO

suspending the license was issued pursuant to Health and Safety Code section 1596.886 which authorizes such action upon a showing that such suspension is reasonably necessary to protect the children in care at the licensed facility. The Deputy Director concluded from her review of the Accusation that it was necessary to issue the TSO prior to hearing to protect children in care at the licensed facility from physical and emotional abuse. The license was suspended pursuant to the TSO on Friday, February 7, 1997 and remains in effect to date.

On February 7, 1997, respondent filed a timely Notice of Defense to the Accusation pursuant to Government Code sections 11505 and 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings pursuant to Health and Safety Code section 1596.880, et seq., and Government Code section 11500, et seq.

II

Respondent was licensed by the Department to operate a family day care facility in her home (hereinafter "the facility") at 3420 E. Douglas, Visalia, California. The subject license limits the maximum capacity to 12 children under 10 years of age, including the licensee's and any assistant's children under 12 when in the home, with no more than 4 infants (0 to 2 years of age). Respondent was initially licensed by the Department to operate a Family Day Care Home February 13, 1990. The most recent facility license, Number 54FP-F02308-00-0, was issued to respondent effective on February 14, 1994. Respondent has had no prior disciplinary action.

III

The licensure of family day care homes is governed by Health and Safety Code sections 1596.70 et seq. and 1597.30.

The Department has jurisdiction to revoke, suspend or otherwise impose disciplinary action upon holders of day care licenses issued by the State of California for acts or omissions in violation of statutes and/or regulations¹ which the Department is responsible to enforce. The standard of proof to be applied in this proceeding is the preponderance of the evidence (sections

¹ The regulations governing family day care homes are contained in Title 22, section 102351.1, et seq., California Code of Regulations (hereinafter referred to as "Regulations").

1996.887(b) and 1596.889).

Pursuant to Health and Safety Code section 1596.854, the Department may institute or continue a disciplinary proceeding against a licensee following the suspension, expiration, or forfeiture of a license.

IV

On November 23, 1996, respondent and Robert Wayne Champion (hereinafter "Champion"), a 47-year-old man, were married. They have resided since their marriage at respondent's licensed family day care home at 3420 E. Douglas, Visalia, California. While residing at the facility, Champion frequently assisted respondent in some day care activities. Witnesses testified that children at the facility appeared to enjoy talking and playing with Champion. There was no allegation, nor was there any evidence offered, suggesting that Champion was involved in any inappropriate behavior with children at the facility.

V

[OMITTED TEXT]

VI

In 1982 and 1984, Champion who was then married to Child 2's mother, engaged in inappropriate sexual conduct with Child #2, as follows:

1. On one occasion in 1982, Child #2, who was then 14 years of age, was home alone with Champion. While Child #2 was taking a shower Champion came into the bathroom and proceeded to get into the shower with her. Both Champion and Child #2 were fully undressed. Child #2 ran from the bathroom and locked herself in her mother's bedroom. Six months later Child #2 left her mother's home to live with her father. Two years later Child #2 returned to live with her mother and Champion.
2. On one occasion in 1984, while Child #2 was living with Champion and her mother, Champion got in bed with her and stated "It's you I want and not your mother." Child #2 immediately got out of bed and Champion left the bedroom.

VII

In or about 1979 and 1980, Champion engaged in inappropriate sexual conduct with Child #3, his 8-year-old daughter. During that period of time Champion committed four or five oral sex acts with Child #3. After Champion and Child #3's mother separated or divorced in 1981 or 1982, Child #3 visited Champion at his home in Selma, California. During that visit Champion told Child #3 that he wanted to have sex with her when she was older.

VIII

[OMITTED TEXT]

IX

On May 15, 1993, Champion and Child #1, his then 10- year-old daughter, became involved in an argument. Champion became angry and told Child #1 and her mother, Anna Sue Champion (hereinafter "Anna Sue"), to pack Child #1's clothes as they were going to take her to live with her sister, Child #3. While en route to the sister's home, Champion changed his mind and decided that they would return home. As the three were returning home, with Anna Sue driving, Champion became violent and struck Anna Sue on the face and broke the windshield with his fists. He also grabbed the steering wheel. During Champion's fit of anger Child #1 was in the back seat of the vehicle. Upon arriving at home a deputy sheriff was summoned and Champion was arrested.

Champion acknowledged that he becomes angry once in a while and that his violent conduct against Anna Sue was because he had been drinking.

X

[OMITTED TEXT]

XI

[OMITTED TEXT]

XII

[OMITTED TEXT]

XIII

All allegations in the Accusation that are not hereinabove found to be true, are hereby found to have not been established by a preponderance of the evidence.

DETERMINATION OF ISSUES

I

It was established by a preponderance of the evidence that cause to revoke respondent's family day care license exists pursuant to Health and Safety Code section 1596.885, subdivision (c), in that continuance of the license at the home of respondent and her husband, Robert Wayne Champion, would be inimical to the health, morals, welfare and safety of children receiving services from the facility and of the people of the State of California, by reason of Robert Wayne Champion's history of sexual misconduct with Child #2 and Child #3, as more specifically set forth at Findings VI and VII; and by reason of Robert Wayne Champion's propensity to become angry and violent toward a family member as found at paragraph IX of the Findings of Fact.

II

[OMITTED TEXT]

III

[OMITTED TEXT]

IV

[OMITTED TEXT]

V

[OMITTED TEXT]

VI

The revocation of respondent's family day care license is solely due to her husband's history of sexual misconduct and other inappropriate behavior that occurred long before their marriage in November 1996. The basis for the revocation of the

license is because the husband's presence at the facility would create a potential risk to the safety and well being of the children in care at the licensed family day care home.

VI

Respondent's presence in, or her working at, a licensed facility, where Robert Wayne Champion's presence is prohibited, would not be inimical to the health, morals, welfare or safety of the children receiving services from the facility or to the people of the State of California.

ORDER

The Family Day Care license heretofore issued to Dodi Eckard is hereby revoked.