

BEFORE THE  
DEPARTMENT OF SOCIAL SERVICES  
STATE OF CALIFORNIA

In the Matter of the Accusation )  
Against: )  
 ) Case No. 429633701  
VIVIAN GREEN )  
1109 West Arnold ) OAH Case No. L-9703272  
Lompoc, CA 93436 )  
 ) 99 CDSS 13  
Respondent. )  
\_\_\_\_\_ )

PROPOSED DECISION

This matter came before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on September 10, 11, and 12, 1997, in Santa Barbara, California.

Steven McNeal, Staff Attorney, represented complainant Martha Lopez. Respondent represented herself.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing and the matter was submitted for decision. The Administrative Law Judge makes the following findings of fact:

FINDINGS OF FACT

1. Complainant filed the First Amended Accusation solely in her official capacity as Deputy Director, Community Care Licensing Division, Department of Social Services ("Department"), State of California.
2. The Department is the agency of the State of California responsible for the licensure of foster family homes pursuant to the California Community Care Facilities Act, Health and Safety Code<sup>1</sup> section 1500 et seq.
3. Respondent is licensed by the Department to operate a foster family home at 1109 West Arnold, Lompoc, California ("facility"). The license was issued on June 4, 1996, and is currently in effect. The facility is licensed for a maximum capacity of 5 children, ages 0 through 17.

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<sup>1</sup>All further statutory references are to the Health and Safety Code unless otherwise stated.

4. Prior to her move to the facility, respondent operated a foster home at another location, Tahitian Village Apartments, since 1993.

5. During the period of May 1994 to June 1996, Katherine McCullough visited the facility in connection with her children placement and supervision duties. On the average, she was at the facility three to four times per month. On approximately half of her visits McCullough found foster children unsupervised by respondent or another responsible adult; on some of these instances respondent did not return to the home before McCullough left twenty to thirty minutes after arrival.

6. Child number 4, an eight-year-old boy, was in respondent's care for approximately two years, until the latter part of August 1996.

7. On more than one occasion, respondent spanked Child number 4 as a form of discipline.

8. Two teenage boys were in respondent's care in 1995 and 1996. Child number 3, was born on May 8, 1982. The other boy, P.L., was fifteen years old in 1996.

9. a. On several occasions between August 1995 and August 1996, Child number 3 and P.L. hit or kicked the much smaller Child number 4. These blows at times left bruises on Child number 4's body.

b. Child number 4 reported the physical abuse to respondent on several occasions. Respondent at times admonished the older boys to stop hitting the younger child. However, she was unable to stop the older children from continuing to abuse Child number 4.

10. In the latter part of August 1996, Child number 3 hit Child number 4 to such extent that he left two bruises on the younger child's body. One in the left leg measured two inches in diameter and another in the upper left arm measured one inch in diameter.

11. Child number 2, a sixteen-year-old girl, resided at the facility from early-August 1996 to mid-October 1996.

12. Child number 2 required medication to control her bipolar disorder. Respondent on occasion neglected to give the child her medication.

13. a. On October 9, 1996, respondent went to church and left her oldest son, Jason Fenwick, to supervise the foster children.

b. While Fenwick was watching television in the living room with Child number 4, Child numbers 2 and 3 and P.L., were in the garage which had been converted to a game room. Child number 2 was doing homework and the two boys were playing video games.

At some point the three older children in the garage began to wrestle and physically play around, as they often did. However, on this date the two boys pinned Child number 2 to the floor while one of them placed his exposed penis on the girl's body. Child number 2 did not consent to the sexual assault. She was very upset and hurt after the incident.

c. The activity in the garage created sufficient noise for anyone properly supervising the children to hear it.

d. Respondent failed to ensure that the children receive appropriate supervision from her son.

14. In leaving the children without adult supervision as set forth in finding of fact number 5, in failing to prevent the older boys from hitting Child number 4 as set forth in finding of fact numbers 9 and 10, and in failing to ensure proper supervision of the children as set forth in finding of fact number 13, respondent failed to exercise appropriate supervision over the foster children in her care.

15. Respondent's conduct, as set forth in finding of fact numbers 7, 12, and 14 is inimical to the health, welfare, and safety of the children in her care.

16. Respondent has extensive experience in working with children at risk. She continues to volunteer in community activities to improve the lives of children.

17. She loves the children in her care and attempts to provide a nurturing home. She emphasizes the importance of education. She also provides extensive recreational activities for them.

18. Several individuals testified at the hearing on behalf of respondent, including Child number 3's mother, a former foster child, and members of her family. They uniformly praised her character and foster-parenting skills.

19. Except as set forth in this Decision, all other allegations in the accusation are found to be unproved or surplusage.

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Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

DETERMINATION OF ISSUES

1. Respondent failed to properly discharge the duties and responsibilities of a foster parent in that she failed to leave the foster children under the supervision of a responsible adult during absences from the facility, as set forth in finding of fact numbers 5, 13, and 14, which failure constitutes grounds to suspend or revoke her license pursuant to section 1550(a) and Title 22, California Code of Regulations ("CCR"), section 87064(a).

2. Respondent violated the personal rights of Child number 4 by spanking him, as set forth in finding of fact number 7, which failure constitutes grounds to suspend or revoke her license pursuant to section 1550(a) and Title 22, CCR, section 87072(a)(3).

3. Respondent failed to properly assist Child number 2 in taking her medications, as set forth in finding of fact number 12, which failure constitutes grounds to suspend or revoke her license pursuant to section 1550(a) and Title 22, CCR, section 87075(d).

4. Respondent engaged in conduct inimical to the health, welfare, and safety of the children in her care, as set forth in finding of fact numbers 7, 12, 14, and 15, and determination of issues numbers 1, 2, and 3, which conduct constitutes grounds to suspend or revoke her license pursuant to section 1550(c).

5. All evidence presented by respondent to explain and mitigate her conduct, as well as all other evidence presented regarding her fitness as a foster parent, has been considered. Despite this evidence, in light of the violations established the order which follows is necessary for the protection of children in care.

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WHEREFORE, THE FOLLOWING ORDER is hereby made:

The foster parent license issued to respondent Vivian Green is revoked.