STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARJI LECOMPTE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 01-3632
	)	
DEPARTMENT OF CHILDREN AND FAMILY SERVICES,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings by its designated Administrative Law Judge, Fred L. Buckine, held a formal hearing in the above-styled case on January 24, 2002, in Viera, Florida.

APPEARANCES

For Petitioner: Marji LeCompte, pro se
2684 Pepper Avenue
Melbourne, Florida 32935

For Respondent: Eric D. Dunlap, Esquire
Department of Children and Family Services
400 West Robinson Street, Suite S-1106
Orlando, Florida 32801-1782

STATEMENT OF THE ISSUE

Whether Petitioner knowingly and willfully made a false report of abuse of a child, W.D., on January 29, 2001, in

violation of Section 39.206, Florida Statutes, and if so, what penalty is appropriate.

PRELIMINARY STATEMENT

On August 24, 2001, Respondent, Department of Children and Family Services (DCF), noticed Petitioner, Marji Lecompte, of its intention to impose a $1,000.00 fine pursuant to Section 39.206, Florida Statutes, for Petitioner's knowingly and willingly filing a false child abuse report with DCF's abuse hotline on January 29, 2001.

This matter was referred to the Division of Administrative Hearings on September 14, 2001, along with Petitioner's request for an Administrative Hearing.

After several continuances, a final hearing was held on January 24, 2001, at Viera, Florida.

At the final hearing Petitioner testified on her own behalf, presented the testimonies of Jamie Blazer, David Bazer, and Beverly Lecompte, and introduced two exhibits (P1-2) into evidence. Respondent called Petitioner as a witness and presented the testimonies of John E. Grinwis, Kathleen Hansen, both of the Melbourne Police Department, Robert Kortvawi and Andrew Evans, both DCF employees, and introduced three exhibits (R1-3) into evidence.

The Transcript of the hearing was filed on February 27, 2002. The parties' request for twenty days to submit their respective proposed recommended orders was granted. On February 24, 2002, Respondent filed a motion to supplement the record with late filed exhibits that was granted.

Respondent and Petitioner, on February 26 and 27, 2002, respectively, filed their Proposed Recommended Orders, and they have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based upon observation of the witnesses and their demeanor while testifying, the documentary materials received in evidence, and the entire record compiled herein, the following relevant and material facts are found.

1. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case. Section 120.57, Florida Statutes, and Rule 28-106.201, Florida Administrative Code.

2. Under Subsections 39.201-39.206 and 39.301-39.307, Florida Statutes (2001), the Department of Children and Family Services is the State Agency responsible for receiving reports of child abuse and protective investigations thereof.

3. Petitioner, mother of W.D., on January 29, 2001, when her son was visiting with her family, observed what she suspected to be abuse treatment by the father when he paddled him on Thursday, January 28, 2001. Petitioner called the Melbourne Police Department and reported the incident.

4. Officer Grinwis, was the first law enforcement officer to arrive on the scene but did not write a report because the incident did not occur in Melbourne.

5. Officer Grinwis recalled that while on patrol on January 29, 2001, he received a signal "52" (battery) call on his radio and went to Petitioner's home.

6. During his interview of Petitioner, Officer Grinwis recalled Petitioner advising him that her son came home with "marks" on his bottom and she was concerned that he was either being abused or sexually assaulted, or both.

7. Officer Grinwis saw no evidence of marking by a belt or instruments that looked like a pattern of use of a paddle on the child's bottom. From his observation of the child's bottom, he was not alarmed or suspicious to believe that a sexual assault, abuse, or something to that effect had occurred. Without interviewing the child, Officer Grinwis concluded that the signal "52" complaint to which he responded was unfounded.

8. Officer Grinwis recalled informing Petitioner to call the Department of Children and Family Services and to call the Palm Bay Police Department.

9. On January 30, 2001, Officer Hansen, Melbourne Police Department, arrived at Petitioner's home in the company of Robert Kortvawi, DCF's investigator. As did her fellow officer and for the same reason, Officer Hansen did not write a report on her observations and involvement in the interview of the child.

10. Testifying from memory, Officer Hansen recalled observing the child along with Robert Kortvawi and she saw nothing on the child's bottom she considered "bruising or anything." She thought she observed a little pinkness or rubbing on his bottom, but did not recall any "bruising or anything." In her opinion allegations of "bruising and welts" were unfounded.

11. Robert Kortvawi centered his investigation on the reported allegations of "excessive corporal punishment, bruises and welts." Petitioner informed Mr. Kortvawi that she had reason to believe there was bruising on the child's buttocks from being physically abused by his father and that he had spanked him with a paddle on Thursday night. He was upset that the child was participating in karate when he should not have been participating in karate.

12. From his personal interview with the child, Mr. Kortvawi was informed that the father had, in fact, spanked the child with a paddle on Thursday night (January 28, 2001).

13. From his personal observation of the child, Mr. Kortvawi saw "some slightly red--pinkish chafing; no bruises or marks or anything--nothing that would have indicated any type of physical abuse."

14. The photographs taken by Mr. Kortvawi of the child's bottom and condition were sent to the Palm Bay Police Department, and were not offered in evidence during the hearing.

15. After his investigation, Mr. Kortvawi concluded that no medication was necessary, and no child protection team referral was warranted, and closed his report with a final determination of "no further action necessary."

16. Mr. Kortvawi opined that the abuse call made by Petitioner on January 29, 2001, was different and he believed it to be false because of three primary factors: nineteen hotline abuse calls had been made regarding this family during the marriage; the statements regarding her ex-husband made by Petitioner during his interview with her; and Petitioner's twelve separate hotline abuse calls made from 1995 through 2001.

17. Of the twelve individual abuse hotline calls made by Petitioner, three were closed with "some indicators"; two sexual abuse (child on child) that were turned over to the local police

department with no action by DCF and seven closed with no indicators found.

18. There have been on-going differences of opinion between Petitioner and her ex-husband both during the time of their marriage, during the divorce proceeding, and currently during Petitioner's exercise of her visitation privileges.

19. Petitioner's mother and daughter admitted making individual hotline abuse calls during the marriage of Petitioner to W.D.'s father. Those abuse calls were made primarily during the time when the two families, children the husband brought into the marriage household and children the wife brought into the marriage household, were living together.

20. Both mother and daughter saw W.D.'s buttocks on January 29, 2001, and were concerned with the "severity of the beating" administered by the father.

21. Petitioner's testimony centered on her concern for the welfare of her son and her uncertainty about the father's "excessive corporal punishment" administered to the six-year-old child.

22. Petitioner further testified that she made the January 29, 2001, hotline abuse phone call at the suggestion of Officer Grinwis, Melbourne Police Department, because of the marks on W.D's bottom, and denies that her suspected abuse was false when willingly and knowingly made.

23. Respondent has shown, by a preponderance of evidence, that Petitioner knowingly and willfully made the following hotline abuse report of suspected abuse of her son by the father who had paddled the child a day before, when she knew of should have known the suspected abuse was, in fact, false, to wit:

> Yes, I just had the local police out here at my house, and they told me because of the incident not actually happening in my city, that I should contact you all and the city where the suspected abuse occurred.
>
> The incident probably occurred in Palm Bay.
>
> Okay. My son has a large bruise about four inches long and about three inches wide on his buttocks. I picked him up Friday night from his father, and he did not bathe last night. So, tonight when he went to bathe - -he's six years old - -I asked him was he clean enough, or something, and had me go make sure, that's when I saw the bruise.
>
> He said by (he was hit) a paddle. By his father. I asked him when and why, and asked him what happened. The last time I saw him was on Wednesday and he did not have anything like that.
>
> Yeah, supposedly, he was kicking and teaching some children--my husband had him in Ti-Kwon-Do. My son was teaching other kids at times he was not supposed to, and, I guess, he gave him a good old beating, but, he told the officer he only hit him once, and, the bruise is very large.
>
> (DCF reporter) My name is Andrew, my number is 0180. I am not familiar how they work, but I will contact Palm Bay.

> They actually came out, I asked the officer to look at him . . ., and I am going to take a picture.
>
> (DCF) Right, that is the best thing you can do right now.
>
> Well, the thing is, there was some incidences of him being hit (on his buttocks) about two years ago. . . . Yeah, and they were considered unfounded. They were considered on the back of his leg, like it could have happened in climbing or falling.

CONCLUSIONS OF LAW

24. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in the proceeding. Subsection 120.57(1), Florida Statutes, and Section 39.206, Florida Statutes.

25. In its Notice of Intent Pursuant to Section 39.206, Florida Statutes, and Order Imposing an Administrative Fine, DCF cites the following authorities: Section 39.206, Florida Statutes, and Rule 28-106.201, Florida Administrative Code.

> 39.206 Administrative fines for false report of abuse, abandonment, or neglect of a child; civil damages.--
>
> (1) In addition to any other penalty authorized by this section, chapter 120, or other law, the department may impose a fine, not to exceed $10,000 for each violation, upon a person who knowingly and willfully makes a false report of abuse, abandonment, or neglect of a child, or a person who counsels another to make a false report.

(2) If the department alleges that a person has filed a false report with the central abuse hotline, the department must file a Notice of Intent which alleges the name, age, and address of the individual, the facts constituting the allegation that the individual made a false report, and the administrative fine the department proposes to impose on the person. Each time that a false report is made constitutes a separate violation.

(3) The Notice of Intent to impose the administrative fine must be served upon the person alleged to have filed the false report and the person's legal counsel, if any. Such Notice of Intent must be given by certified mail, return receipt requested.

(4) Any person alleged to have filed the false report is entitled to an administrative hearing, pursuant to chapter 120, before the imposition of the fine becomes final. The person must request an administrative hearing within 60 days after receipt of the Notice of Intent by filing a request with the department. Failure to request an administrative hearing within 60 days after receipt of the Notice of Intent constitutes a waiver of the right to a hearing, making the administrative fine final.

(5) At the administrative hearing, the department must prove by a preponderance of the evidence that the person filed a false report with the central abuse hotline. The administrative hearing officer shall advise any person against whom a fine may be imposed of that person's right to be represented by counsel at the administrative hearing.

(6) In determining the amount of fine to be imposed, if any, the following factors shall be considered:

(a) The gravity of the violation, including the probability that serious physical or emotional harm to any person will

result or has resulted, the severity of the actual or potential harm, and the nature of the false allegation.

(b) Actions taken by the false reporter to retract the false report as an element of mitigation, or, in contrast, to encourage an investigation on the basis of false information.

(c) Any previous false reports filed by the same individual.

(7) A decision by the department, following the administrative hearing, to impose an administrative fine for filing a false report constitutes final agency action within the meaning of chapter 120. Notice of the imposition of the administrative fine must be served upon the person and the person's legal counsel, by certified mail, return receipt requested, and must state that the person may seek judicial review of the administrative fine pursuant to s. 120.68.

(8) All amounts collected under this section shall be deposited into an appropriate trust fund of the department.

(9) A person who is determined to have filed a false report of abuse, abandonment, or neglect is not entitled to confidentiality. Subsequent to the conclusion of all administrative or other judicial proceedings concerning the filing of a false report, the name of the false reporter and the nature of the false report shall be made public, pursuant to s. 119.01(1). Such information shall be admissible in any civil or criminal proceeding.

(10) A person who knowingly and willfully makes a false report of abuse, abandonment, or neglect of a child, or a person who counsels another to make a false report may be civilly liable for damages suffered, including reasonable attorney fees and costs, as a result of the filing of the false

> report. If the name of the person who filed the false report or counseled another to do so has not been disclosed under subsection(9) the department as custodian of the records may be named as a party in the suit until the dependency court determines in a written order upon an in camera inspection of the records and report that there is a reasonable basis for believing that the report was false and that the identity of the reporter may be disclosed for the purpose of proceeding with a lawsuit for civil damages resulting from the filing of the false report. The alleged perpetrator may submit witness affidavits to assist the court in making this initial determination.
>
> (11) Any person making a report who is acting in good faith is immune from any liability under this section and shall continue to be entitled to have the confidentiality of their identity maintained.

26. The determinative issue in this case is whether the abuse report call was false, in fact, when made on January 29, 2001. If not, further inquiry is not necessary.

27. The party asserting the affirmative of an issue before an administrative tribune has the burden of proof. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). DCF must prove the allegations that are contained in its Notice of Intent Letter dated August 24, 2001, to Petitioner.

28. In this case, there is a preponderance of evidence to sustain the initial issue that the abuse report was "false" when the time made by Petitioner. Petitioner's assertion that her report of "suspected abuse" regarding her child was made only

after the suggestion by the police officer on the scene is not credible.

29. The evidence is clear that Petitioner knew W.D.'s father paddled him the day before the she made the report. The evidence is clear that paddling by the father left marks on W.D's buttocks for longer than 24 hours, and this was not the first paddling incident by the father on the child. In the past, Petitioner had made not less than twelve suspected abuse report alleging the father abused this child. For the report in question, neither Petitioner nor the DCF investigator considered the "suspected abuse marks" were of such severity that a medical examination was necessary to confirm Petitioner's suspicion of excessive corporal punishment. Petitioner made no attempt to retract her report.

30. Thus, considering the evidence most favorable to Petitioner, the reporting of the marks on W.D.'s buttocks on January 29, 2001, as "suspected abuse" by the father was false when made. The terms suspect and false are not terms of art, but are terms of common meaning and understanding. The term, "suspect" is to surmise to be true or probable, (The American Heritage Dictionary, page 1296). The term, "false" is contrary to fact or truth; without grounds, (The American Heritage Dictionary, page 473).

31. In Aurigemma v. State of Florida, 801 So. 2d 982, 985 (4th DCA 2001), a case of conviction for false reporting of an non-existing crime, the Court held:

> To be guilty of false reporting of a non-existence crime, one must willfully impart, convey, or cause to be imparted or conveyed . . . false information or reports concerning the alleged commission of a crime, knowing such information or report is false, in that no such crime has actually been committed.

32. Petitioner saw marks on the buttocks of her son. Without consultation with medical personnel to confirm her suspicion of "severe corporal punishment," Petitioner called the local police. At the suggestion of law enforcement, Petitioner then called DCF's hotline and reported her suspicions identifying her ex-husband as the abuser. Prior to making the hotline abuse call in question, Petitioner had made twelve other hot line abuse calls identifying her ex-husband as the abusive parent in each instant. Petitioner was very familiar with the normal course of action to be taken by the DCF having filed 12 abuse reports in the past. On January 29, 2001, when Petitioner made her abuse report the evidence is clear that Petitioner's statement, bruise four inches long and three inches wide on W.D.'s buttocks, to DCF's abuse hotline operator were knowingly false when made.

RECOMMENDATION

Based upon the foregoing, it is hereby

RECOMMENDED

That the Department of Children and Family Services enter a final order, pursuant to Section 39.206, Florida Statutes, imposing an Administrative Fine against Petitioner for knowingly and willfully making a false hotline abuse report on January 29, 2001.

DONE AND ENTERED this 10th day of April, 2002, in Tallahassee, Leon County, Florida.

FRED L. BUCKINE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 10th day of April, 2002.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.