

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CINDY SPRINGSTON,)
)
 Petitioner,)
)
 vs.) Case No. 02-1346
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on June 5, 2002, in Inverness, Florida, before the Division of Administrative Hearings by its designated Administrative Law Judge, Diane Cleavinger.

APPEARANCES

For Petitioner: Gregory Paules, Esquire
12421 North Florida Avenue
Tampa Law Center, Suite B-122
Tampa, Florida 33612

For Respondent: Ralph J. McMurphy, Esquire
Department of Children and
Family Services
1601 West Gulf Atlantic Highway
Wildwood, Florida 34785-8158

STATEMENT OF THE ISSUE

Whether Petitioner's application for licensure as a family foster home should be granted.

PRELIMINARY STATEMENT

By letter dated January 14, 2002, Respondent, Department of Children and Family Services (Department), advised Petitioner, Cindy Springston, that her application for licensure as a family foster home was denied. The denial was based on a Florida Abuse Hotline Report received on May 14, 2000, which, after investigation, the Department determined that there were some indications of neglect. Petitioner disagreed with the denial and disputed the allegations of the letter. By letter dated February 7, 2002, Petitioner requested a formal administrative hearing. The case was forwarded to the Division of Administrative Hearings.

At the hearing, Petitioner testified in her own behalf and offered four exhibits into evidence. Respondent presented the testimony of three witnesses but did not offer any exhibits into evidence.

After the hearing, Petitioner filed a Proposed Recommended Order on June 26, 2002. Respondent did not file a proposed recommended order.

FINDINGS OF FACT

1. Around September 4, 2001, Petitioner applied for licensure as a family foster home.
2. Petitioner successfully completed all the requirements for licensure mandated by the Department. In fact, the

Department's family services counselor supervisor recommended Petitioner for licensure. However, prior to finalization of her recommendation, she was asked to review the application again based on information in the central abuse hotline.

3. From 1997 until June 2000, Petitioner operated a registered day care. During the time the day care was operated, Petitioner cared for approximately 25 children ranging in ages from infant and up.

4. Prior to May 14, 2000, A.N. was enrolled at Petitioner's day care. His mother visited the facility at least twice and was introduced to Petitioner's pet boxer, a medium size dog who lived in the house with Petitioner. The mother registered no objections to the presence of the dog and knew the dog would be around the children at the daycare. In fact, the dog was very friendly and was very gentle with the children at the daycare. Additionally, the children at the daycare liked to play with the dog. The dog was not mean or vicious and had never been so.

5. On May 11, 2000, A.N. was dropped off at the day care by his mother. He stayed for approximately four hours. He was picked up by his mother. During his stay at the day care, he was fed as instructed and was supervised appropriately by Petitioner. He did have a difficult time being separated from his mother. At no time was he left alone with Petitioner's dog.

6. On May 12, 2000, A.N. was again dropped off by his mother. He stayed approximately seven hours. He was fed appropriately and adequately supervised during his stay. He was crying due to separation from his mother. Petitioner saw A.N.'s grandmother pull into the driveway and met her when she entered the daycare. Petitioner's dog licked A.N. in the face. The dog's tongue did not go into the child's mouth. The dog never snapped at the child and was never left alone with the child. Petitioner gave the grandmother A.N.'s bottles and his teddy bear. There was no dog feces on any of A.N.'s things when he left with his grandmother. A.N. did not return to the daycare.

7. On May 14, 2000, the Department received a report on the central abuse hotline, Abuse Report No. 2000-076224. The report alleged that Petitioner was inadequately supervising A.N. because a large dog was alone with A.N., snapping at him and licking the inside of his mouth, A.N.'s teddy bear had dog feces on it, A.N.'s bottles were not refrigerated, A.N. was not fed his food, and had physical injuries.

8. On May 15, 2000, the Department's child protective investigator along with a Sheriff's deputy visited Petitioner's home unannounced. She found the home to be neat and clean. The dog was friendly and did not show any signs of viciousness. In fact, the visit did not yield any information which would support the allegations of the abuse report.

9. Later, the Department's investigator interviewed A.N.'s mother and grandmother. The bear had been washed. Based on interviews with the mother and grandmother, the Department closed the report finding some indications of neglect in the areas of inadequate supervision, inadequate food, and exposing a child to dangerous conditions (the dog). However, neither the grandmother nor the mother testified at the hearing and no independent evidence was offered at the hearing to support the allegations of the abuse report. Therefore, for purposes of this licensure hearing there is no credible, non-hearsay evidence to support the allegations made in the abuse report and the report offers no basis to deny Petitioner's application for licensure as a family foster home. Moreover, the presence of a dog in a home does not preclude licensure as a family foster home. The Department's own licensing standards checklist reflects that a dog in a foster home must be currently vaccinated and access to potentially dangerous animals must be restricted. Petitioner met these criteria.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Sections 120.57 and 120.60, Florida Statutes.

11. In 1997, Section 39.201(4)(a) and (e), Florida Statutes, authorized the Department to establish a central abuse

hotline and established the uses of the information contained in the central abuse hotline. Section 39.201(4)(a) and (e) states in part:

(4)(a) The department shall establish a central abuse hotline to receive all reports made pursuant to this section, . . . which any person may use to report known or suspected child abuse, abandonment, or neglect.

* * *

(e) Information in the central abuse hotline may not be used for employment screening. Access to the information shall only be granted as set forth in s. 415.51.

12. In 1998, Section 39.201(4)(e), Florida Statutes, was renumbered as subsection (6) and amended to state:

(6) Information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h). Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.

13. Sections 409.175 and 409.176, Florida Statutes (2000), deal with the licensure and registration of family foster homes. Section 409.175(1)(f) states:

(f) "License" means "license" as defined in s. 120.52(9). A license under this section is issued to a family foster home or other facility and is not a professional license

of any individual. Receipt of a license under this section shall not create a property right in the recipient. A license under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department.

14. It is clear from the statutory language that the Department may use the information it finds in the central abuse hotline in the licensure and re-licensure process for family foster homes. The former, pre-1997 central abuse registry system was replaced by the central abuse hotline and the central abuse registry ceased to exist upon that replacement. What happened to the central abuse registry records is unclear. What is clear from the 1997 amendments is that verified abuse reports no longer conferred a right to an administrative hearing since no substantial interest of a person involved in the report was impacted by the maintenance of such a report and the reports, by themselves, did not constitute competent evidence in an administrative hearing. Thus, the use by the Department of information in the central abuse hotline is of limited value in the licensure process when that information is challenged and a formal administrative hearing is sought.

15. Section 409.175(8)(a) and (b), Florida Statutes (2000), states in part:

(8)(a) The department may deny, suspend, or revoke a license.

(b) Any of the following actions by a home or agency or its personnel is a ground for denial, suspension, or revocation of a license:

1. An intentional or negligent act materially affecting the health or safety of children in the home or agency.

2. A violation of the provisions of this section or of licensing rules promulgated pursuant to this section.

3. Noncompliance with the requirements for good moral character as specified in paragraph (4)(a).

16. Section 409.175(4)(a), Florida Statutes (2000), states in part:

(4)(a) The department shall adopt and amend licensing rules for family foster homes . . . The requirements for licensure and operation of family foster homes . . . shall include:

* * *

5. The good moral character based upon screening, education, training, and experience requirements for personnel.

17. Section 65C-13.009(6)(b) and (e), Florida Administrative Code, states in part:

(b) Screening. According to s. 409.175, F.S., screening means the act of assessing the background of personnel and includes, but is not limited to, employment history check, check of references, local criminal records check through local law enforcement agencies, fingerprinting, statewide criminal records check through the Department of Law Enforcement, federal criminal records through the Federal Bureau of Investigation and abuse registry clearance.

* * *

(e) Abuse Registry Checks. Abuse Registry checks are obtained annually for all family foster homes. . . . (emphasis supplied)

18. Section 65C-13.006(3), Florida Administrative Code, states in part:

(3) Prior to the issuance of a new license, the counselor must secure Abuse Registry and law enforcement clearance for all adults who reside in the home following the procedures outlined in this rule.

19. Both Rules 65C-13.009 and 65C-13.006, Florida Administrative Code, cited above are pre-1997 rules. Neither rule references the current reporting system for child abuse. Indeed the verified report involved in this case is not a report listed in the abuse registry. It is one listed in the central abuse hotline. Since the report is not an abuse registry report, there is nothing for Petitioner to clear under the Department's rules. Moreover, given the 1997 and 1998 amendments, the Department, in an administrative hearing, cannot use the fact that a verified report exists to uphold a denial or revocation of a license based solely on the information contained in a verified report of child abuse. The reports, by themselves, are not competent evidence. If the reports were given such an effect, such reports would clearly involve a substantive interest of a licensee or potential licensee and would be subject to challenge under Chapter 120, Florida

Statutes. Therefore, in an administrative hearing, the Department must produce evidence of the underlying facts contained in a verified report.

20. In this case, the Department has the burden of proof to establish by a preponderance of the evidence that Petitioner was guilty of neglect as reflected in the hotline abuse report. The Department has not established that Ms. Springston was guilty of any such neglect. On the other hand, Petitioner has the burden to establish that she is entitled to be licensed as a family foster home. Petitioner has shown that she has met all of the Department's requirements for licensure. Since there was no credible evidence substantiating the abuse report, it can serve no basis for denying Petitioner's license. Therefore, Petitioner's application for licensure should be granted.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

RECOMMENDED that the Department of Children and Family Services enter a final order granting Petitioner's application for licensure as a family foster home.

DONE AND ENTERED this 30th day of August, 2002, in
Tallahassee, Leon County, Florida.

DIANE CLEAVINGER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of August, 2002.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written 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.