

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN)
AND FAMILY SERVICES,)
)
Petitioner,)
)
vs.) Case No. 03-3153
)
MS. SYLVIA'S IT'S A)
BETTER WORLD DAYCARE)
AND LEARNING CENTER,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on November 4, 2003, in Tavares, Florida, before the Division of Administrative Hearings, by its designated Administrative Law Judge, Barbara J. Staros.

APPEARANCES

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

For Respondent: Sylvia Mitchell, pro se
Ms. Sylvia's It's a Better World Day Care
1904 Bradford Avenue
Leesburg, Florida 34748

STATEMENT OF THE ISSUE

The issue in this proceeding is whether the Department of Children and Family Services should renew the daycare license of Respondent.

PRELIMINARY STATEMENT

On July 25, 2003, the Department of Children and Family Services (Department) issued an Administrative Complaint to Respondent, Sylvia Mitchell, Ms. Sylvia's It's a Better World Day Care. The Administrative Complaint charged Respondent with failure to comply with Sections 402.301-402.319, Florida Statutes. Specifically, the Administrative Complaint alleged that Respondent was cited on March 23, 2003, for non-compliance with sufficiently trained staff in that the director and staff were unable to verify their 40-hour introductory child care training and were not able to document any staff being First Aid or CPR trained. The Administrative Complaint alleged that on April 23, 2003, the facility was cited again for the same violations. Further, the Administrative Complaint alleged that Respondent submitted fraudulent documents to the Department. The Administrative Complaint informed Respondent that its license to operate the daycare center "is hereby revoked."

Respondent disputed the allegations of the administrative complaint and requested an administrative hearing. The Department forwarded the request for a hearing to the Division

of Administrative Hearings on or about September 3, 2003. A formal hearing was scheduled for November 4, 2003.

At the commencement of the hearing, counsel for the Department clarified the status of Respondent's license. That is, that Respondent's provisional license was scheduled to expire on August 8, 2003, and that the Administrative Complaint should not have characterized the action as a revocation, but should have informed Respondent that no new license would be issued upon the expiration of the provisional license.

Since the Administrative Complaint was issued on July 25, 2003, before the expiration of Respondent's license, the action taken by the Department is in the nature of a denial of an application to renew Respondent's day care license.

At hearing, Petitioner presented the testimony of Elizabeth Ainslie, Melissa Stephan, Clark Henning, Leighton Edwards, and Glenda McDonald. Petitioner's Exhibits 1 through 9 were admitted into evidence. Respondent presented the testimony of Amy Ramirez and Sylvia Mitchell. Respondent's Exhibits 1 through 9 were admitted into evidence. Official recognition was taken of Sections 402.305 and 402.319, Florida Statutes (2003), and Florida Administrative Code Rules 65C-22.004 and 65C-22.006.

A Transcript consisting of one volume was filed on November 24, 2003. The Department timely filed a Proposed Recommended Order and Respondent timely filed a written post-

hearing submission, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Sylvia Mitchell owned and operated Ms. Sylvia's It's a Better World Day Care (the Center) which was located in Leesburg, Florida. Its annual license was scheduled to expire in May 2003.

2. Clark Henning is a daycare licensing counselor with District 13 of the Department. He conducted a relicensing inspection of the Center on March 31, 2003. He was accompanied by Leighton Edwards, who is also employed by the Department.

3. During the course of the relicensing inspection, Mr. Henning completed a 63-item checklist of the facility. There were several areas in which Mr. Henning noted that the Center was not in compliance with applicable statutes and rules. Among the areas of non-compliance noted were that there was insufficient documentation of required staff training and no documentation that any staff member present at the Center was current in cardiopulmonary resuscitation (CPR) and first-aid training.

4. The checklist shows a required compliance date of April 30, 2003, for the 40-hour training requirement and April 7, 2003, for the requirement that any staff present was current in first-aid training and CPR training.

5. Because there were areas of non-compliance, Mr. Henning also completed an Intent to Impose Administrative Action which he gave to Ms. Mitchell on March 31, 2003. The Notice, and the checklist, included the following comments:

40-Hour Training (2)(a)

* * *

Director, SM, could not document 40 hours training. Has certificates for 20-hours and 10-hours only. States she has enrolled in the 10-hour course.

Staff member, BH, could not document 40 hours training. Has certificates for 20-hours and 10-hours only.

Staff member, JE, could not document 40-hours training. Has certificates for 20-hours and 10-hours only.

* * *

First Aid staff/Supplies (2)(a-c)

* * *

Could not document any staff on site that was current in First Aid training.

* * *

CPR Staff(2)(a,b)

* * *

Could not document that any staff present was current in CPR.

6. In response to the Intent to Impose Administrative Action, Ms. Mitchell sent a letter dated April 23, 2003, to Mr. Henning. Paragraph 2 of the response stated as follows: "CPR/first aid provided on each employee. Copy's [sic] provided on C.P.R. & 1st aid."

7. Mr. Henning was unsure what "provided" meant as he did not receive a copy of first aid or CPR certificates. However, based upon Ms. Mitchell's representations in her April 23, 2003, response letter, Mr. Henning recommended the approval of the issuance of a provisional license to the center. The provisional license was issued on May 9, 2003, with an expiration date of August 8, 2003. The Department issued a provisional license rather than a regular license because several items were found to be in non-compliance. Despite the non-compliance items, Mr. Henning did not observe anything that jeopardized the children's safety:

The children were safe in the facility with the providers that she had. So there was no safety issue associated with the noncompliance items. So then to me it was reasonable to give her an opportunity to come in alignment with statutes and rules without closing her down. Because again, I didn't feel the children themselves were in an unsafe situation.

8. Mr. Henning made an impromptu visit to the Center on April 22, 2003, to see how the facility was coming along with the non-compliance items and to offer technical assistance.

However, the facility was locked at that time and no one was there.

9. Ms. Mitchell left the Center for maternity leave sometime in April 2003, as she had a baby on April 27, 2003.

10. Mr. Henning returned to the Center on July 3, 2003, to conduct another relicensing inspection and to determine whether Ms. Mitchell brought the facility into compliance. Mr. Henning was accompanied by Ms. Glenda McDonald, another daycare licensing counselor. Ms. Mitchell was at the Center on July 3, 2003, although she had not yet returned to work.

11. As a result of the July 3, 2003, licensure reinspection, Mr. Henning prepared another reinspection checklist. He again found the facility to be in non-compliance in the area of training but found the facility to be in compliance in the areas of "first aid staff/supplies" and "CPR staff."

12. However, during the inspection, Mr. Henning examined copies of the CPR and first-aid cards showing Ms. Mitchell's name as having met those requirements. The CPR card indicates it is from the American Heart Association. The first-aid card indicates it is from Lake Technical Center. Her name was written on both copies in cursive handwriting.

13. Ms. McDonald noticed that the CPR and first-aid cards were photocopies but the copies were signed in ink. The ink signatures were original signatures that had not been copied. Ms. McDonald recognized that these were not typical of CPR and first-aid cards.

14. Mr. Henning faxed the copies given to him by Ms. Mitchell to Ms. Elizabeth Ainslie, the Director of the Hearts of Lake County Training Center. Hearts of Lake County is one of three CPR and first-aid training centers in Lake County. Ms. Ainslie immediately noticed that Ms. Mitchell's name was handwritten because such cards never go out of their training center handwritten as they are computer processed. She indicated her concerns in the margin of the copy faxed to her and faxed it back to Mr. Henning. She also checked her attendance records as the CPR card shows a date of September 9, 2002, as the date of issuance. Ms. Ainslie did not find Ms. Mitchell's name on the class roster for that date.

15. Additionally, Mr. Henning also faxed a copy of the first-aid card purporting to be that of Ms. Mitchell's to Melissa Stephan, a counselor with the Lake Technical Center. She confirmed that Lake Technical does not issue cards with a person's name handwritten on it as the cards are issued by computer. Further, she checked the records and did not find

anything to indicate that Ms. Mitchell had taken the first-aid course at Lake Technical Center.

16. Mr. Henning also looked at employees' files and found no original CPR or first-aid cards in the employees' files. The cards in the employees' files also contained the names written in cursive over the copy of a card. None of the CPR or first-aid cards had names which were typed or computer generated.

17. After receiving this information from Ms. Ainslie and Ms. Stephan, Mr. Henning wrote a detailed memorandum to his supervisor recommending that the Department not issue an annual license to Respondent. He based his decision on his determination that the cards presented to him regarding CPR and first-aid training were forgeries and on the other non-compliance areas noted during his licensure inspections.

18. Ms. Mitchell offered conflicting evidence as to how and why the CPR and first-aid cards were altered and put in the employees' files. She does not dispute that the cards were altered but does dispute that there was any intent to defraud anyone or falsify records.

19. At hearing, Ms. Mitchell did produce documentation that, contrary to Mr. Henning's findings, staff member, J.E., had the required 40 hours of training. Documents produced at hearing regarding staff member B.H. and Ms. Mitchell support Mr. Henning's findings regarding the status of their training.

20. Ms. Mitchell also produced copies of what appear to be authentic Heartsaver First Aid cards for herself, Tracy Chatman, and Amy Ramirez. The cards reference a combination of CPR and first aid: "First Aid/Adult CPR& AED/Environmental." However, Amy Ramirez is a parent of children who were enrolled in the Center, not an employee. The record is unclear as to who Tracy Chapman is. No other cards were produced as to any other staff member. Further, these cards are dated October 2003, well after the corrective action deadline and after the Administrative Complaint was filed.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.57(1), Fla. Stat. (2003).

22. The Department of Children and Family Services is the agency charged with the responsibility of licensing child care facilities in the state of Florida. Chapter 402, Fla. Stat.

23. Ms. Mitchell challenges the non-renewal of the license to operate her day care center. Accordingly, as the party asserting the affirmative of an issue before this administrative tribunal, the Respondent has the burden of proof. Florida Department of Transportation v. J.W.C. Company, 396 So. 2d 778 (Fla. 1st DCA 1981). Respondent has not met her burden to prove entitlement to license renewal.

24. The Administrative Complaint charges Respondent with failure to comply with Sections 402.301-402.319, et seq., Florida Statutes.^{1/} Specifically, the Administrative Complaint charges Respondent in pertinent part as follows:

4. On March 23, 2003, the facility was cited for non compliance with sufficiently trained staff. More specifically, the director and staff members were unable to verify their 40 hour introductory child care training. The facility was also cited for not being able to document any staff being First Aid or CPR trained.

5. On April 23, 2003, the Respondent corresponded in written format that First Aid and CPR had been provided on each employee. This letter also stated that all staff training had been provided also.

6. On July 3, 2003, the facility was cited again for the same concerns listed above. The Respondent inadvertently showed the counselor training certificates that had paper taped over the name and certificate numbers. The Respondent, also gave the counselor copies of First Aid and CPR [sic] that were allegedly current.

7. On July 3, 2003, both the instructors for Hearts of Lake County CPR training, Elizabeth Ainslie, and Lake Technical First Aid, Melissa Stephan, were contacted. Both examined the submitted forms and verified in writing that the cards had been illegally altered.

8. The Department has monitored the facility and offered assistance in correcting these repeated violations, but the Respondent has failed to remedy this pattern of violations. The Respondent has also submitted fraudulent documents.

25. Section 402.310, Florida Statutes, authorizes the Department to take disciplinary actions regarding licenses of child care facilities, and reads in pertinent part as follows:

402.310 Disciplinary actions; hearings upon denial, suspension, or revocation of license; administrative fines.--

(1)(a) The department or local licensing agency may deny, suspend, or revoke a license or impose an administrative fine not to exceed \$100 per violation, per day, for the violation of any provision of ss.402.301-402.319 or rules adopted thereunder. However, where the violation could or does cause death or serious harm, the department or local licensing agency may impose an administrative fine, not to exceed \$500 per violation per day.

(b) In determining the appropriate disciplinary action to be taken for a violation as provided in paragraph (a), the following factors shall be considered:

1. The severity of the violation, including the probability that death or serious harm to the health or safety of any person will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of ss. 402.301-402.319 have been violated.
2. Actions taken by the licensee to correct the violation or to remedy complaints.
3. Any previous violations of the licensee.

26. Section 402.305, Florida Statutes, provides licensing standards for child care facilities. Subsection (7) requires that the minimum standards for childcare facilities include requirements for first-aid treatment and pediatric CPR. Further, subsection (7) specifically requires that "the minimum

standards shall require that at least one staff person trained in cardiopulmonary resuscitation, as evidenced by current documentation of course completion, must be present at all times that children are present."

27. Florida Administrative Code Rule 65C-22.004(2)(a) requires each child care facility to have at least one staff member with a valid certificate of course completion for first-aid training and infant and child CPR procedures. It further requires one staff member satisfying these training requirements to be present at all times that children are in the care of the facility, both on-site and on field trips.

28. Regarding record keeping, Florida Administrative Code Rule 65C-22.006(1) and (6)(e) requires the operator of a child care facility to keep on file and have available at the facility during the hours of operation for the licensing authority's review, documentation that all staff members identified as being relied upon in meeting the CPR and first-aid requirements described above.

29. The Department argues in its Proposed Recommended Order that Section 402.319, Florida Statutes, which establishes criminal penalties for making false statements or misrepresentations on applications for licensure under Sections 402.301 through 402.318, Florida Statutes, comes into play regarding denial of licensure. However, this criminal statute

and its sanctions is beyond the scope of this administrative proceeding.

30. Regardless of her intentions in the course of keeping altered documents in her employees' files, Respondent did not meet her burden of demonstrating that the required documentation existed or was available to the Department showing that the staff had the required hours of specified child care training or the required first-aid and CPR training. Further, Respondent failed to correct these violations over time.

RECOMMENDATION

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

RECOMMENDED:

That the Department of Children and Family Services enter a final order denying Respondent's application for relicensure. Since the Department acknowledged that no child was in danger, it is further recommended that the denial be without prejudice to her right to apply for licensure in the future.

DONE AND ENTERED this 12th day of December, 2003, in
Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of December, 2003.

ENDNOTE

^{1/} No specific provision of Chapter 402, Florida Statutes, or Chapter 65C-22, Florida Administrative Code, is cited in the Administrative Complaint.

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.