

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND)
FAMILY SERVICES,)
)
Petitioner,)
)
vs.) Case No. 07-3672
)
ADOPTION CENTER OF FLORIDA,)
INC., AND SUSAN MORGAN,)
)
Respondents.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on October 24 and 25, 2007, in Tampa, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Raymond R. Deckert, Esquire
Jennifer Lima-Smith, Esquire
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For Respondents: Clay W. Oberhausen, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Respondents' child-placing agency license should be revoked.

PRELIMINARY STATEMENT

The Department of Children and Family Services ("DCF" or the "Department") issued an Administrative Complaint on July 10, 2007, seeking to revoke the child-placing agency license of the Adoption Center of Florida, Inc. (the "Center"), and its owner, Susan Morgan ("Morgan") (jointly referred to herein as "Respondent"). Respondent filed an Answer to the Administrative Complaint, requesting a formal administrative hearing. The matter was forwarded to the Division of Administrative Hearings and assigned to the undersigned Administrative Law Judge.

At the final hearing, the Department called the following witnesses: Barry Plesch, Brad Forber, Jennifer Moody, and Angela Ferguson, all clients or former clients of Respondent. The Department also called: Freddie Brinson from Camelot Community Care; Judy Wichteman, vice president for Program Administration for Hillsborough Kids, Inc. ("HKI"); Armand Grassi, contract manager for HKI; Melissa Leggett, licensing specialist with DCF; and Kris Emden, regional licensing manager for DCF. The Department offered 12 exhibits into evidence; Exhibits 1 and 4 through 12 were admitted. Official recognition was taken of Exhibits 2 and 3.

Respondent called three witnesses: Stacey Moore, director of Licensed Care for HKI; Katrina Oliver, traditional foster care coordinator for HKI; and Susan Morgan. Respondent offered

nine exhibits into evidence; Exhibits 4 through 9 were admitted, and official recognition was taken of Exhibits 1 through 3. The parties asked that the record be kept open in this case until November 15, 2007, so that the deposition of a subpoenaed witness could be taken. The witness, April LaClair, had been subpoenaed twice for deposition and once for attendance at final hearing, but did not appear. The Department did succeed in taking LaClair's deposition on November 5, 2007, but Respondent's counsel did not attend the deposition. It appears Respondent was given ample notice and opportunity to attend. The deposition Transcript of the LaClair deposition was filed with the Division of Administrative Hearings and is accepted as evidence in this matter.

The parties indicated that no transcript of the proceeding would be ordered. The parties were directed to submit proposed recommended orders on or before November 15, 2007. Each party timely submitted a Proposed Recommended Order, and each was duly-considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Department is the state agency responsible for licensing and monitoring child-placing agencies.

2. The Center, whose address is 1602 East Third Avenue, Tampa, Florida, received its initial child-placing agency license from DCF in 2004. The license was renewed October 12,

2006. Susan Morgan has been the director of the Center since its inception.

3. DCF contracts with HKI to provide community-based child welfare services in Hillsborough County. HKI contracts with Camelot Community Care for the performance of adoption related services.

4. DCF received complaints about Respondent and issued an Administrative Complaint with the following categories of violations:

a. A foster parent home study was finalized after only one home visit lasting half an hour. The home study document indicates four home consultations for that client.

b. Files relating to clients were left in an unsecured environment at the Center with unauthorized persons having access to them.

c. An adoptive home study was completed without a visit being made to the prospective adoptive parents' home.

d. Respondent lost or misplaced paperwork from clients which contained confidential information.

e. Respondent failed to timely provide foster parents with a copy of their foster parent licenses once the licenses were issued.

5. Regarding the first violation, two home studies are required to finalize a foster parent home study. The subject family was provided a template for filling in information about their home. This is a reasonable means of gathering information

about a family. The family was directed to fill in the template using the third person format (so that anyone reading the document might infer that someone other than the family had written the information). Morgan did not visit the home at issue, but did send her associate (Wendy Martinez) who conducted a brief 30 to 40-minute visit. The home study was signed by Morgan and dated March 13, 2007, some four or five weeks prior to Martinez's visit. The home study included the following table concerning visits and consultations:

<u>Contact Information</u>	
Inquiry Date	01/05/06
Inquiry Home Visit	02/10/06
Initial Home Consultation	03/15/06
MAPP Graduation	02/26/06
2nd Home Consultation	04/02/06
Final Home Consultation	03/08/07
Date Application Signed	03/08/07

6. The table seems to indicate a single home visit on February 10, 2006, and three home "consultations" on later dates. Morgan says the date of the home visit is a typographical error; it should say April 18, 2006, i.e., the date of Martinez's visit. Morgan admits only one home visit was made, but says the home study was not final. Her testimony on

that topic is not credible. The home study appears complete, has references to several home visits and/or consultations, and is signed by Morgan subsequent to the dates appearing in the aforementioned table.

7. DCF considers the references to home consultations to be tantamount to home visits. Inasmuch as at least two home visits are required for a foster parent home study, this interpretation makes sense.¹ A discussion of the differences, if any, between home visits and home studies follows.

8. There was much testimony at the final hearing as to whether a home visit and a home study are the same thing. Each of the experienced social workers and managers who testified (other than Morgan) seemed to believe the two were synonymous. Even the two witnesses called by Respondent to address the issue opined that home visit and home consultation mean essentially the same thing. Respondent introduced definitions from The Social Worker's Dictionary, but there is nothing in those definitions to suggest they apply to foster care or adoption situations. None of the social workers who testified indicated they would rely on that source to define home visits versus consultations.

9. The home study at issue appears to suggest that four home visits/consultations were conducted, when in fact only one (of the required two) was done.

10. The second category of rule violation concerns unsecured client records. Files belonging to clients of child-placing agencies are extremely confidential in nature. Respondent moved into a new office in the Ybor City section of Tampa during September 2006. The office was shared with a company that specializes in estimating construction project costs. The estimating company had two employees, a receptionist and the owner of the company. The office was set up so that the receptionist was in the same room as Respondent's employee, Martinez. Morgan had a separate office for herself, and the owner of the estimating company had an office upstairs. The Ybor City office had been inspected by DCF in October 2006 and was found to be sufficient for its intended purposes.

11. A client, Angela Ferguson, visited the Center in early April 2007. Morgan was not present when Ferguson arrived, but Martinez was there, as were employees from the other business. Martinez called Morgan on the client's behalf so that Morgan could come to the office. While waiting for Morgan, the client noticed 50 to 60 file folders lying around the office. Some of the files belonged to other clients whose names were visible to Ferguson. Some of the files were probably forms and other non-confidential documents. The client files were not locked in a cabinet or otherwise protected from persons using Respondent's office.

12. On or about May 2, 2007, another client, Jennifer Moody, also visited the Center to get her file (so that she could transfer to another adoption agency). She walked into the office and found the estimating company's receptionist, but no one from the Center was there. The receptionist called Morgan because Moody wanted to wait for her to arrive. While waiting, Moody observed files lying around the office in plain view.

13. When Ferguson expressed her concerns to DCF about the way files were being handled, a licensing specialist was sent out to investigate. DCF employee Melissa Leggett made an unannounced visit to the Center on May 16, 2007, at 10:00 in the morning. Martinez was in the office when Leggett arrived; Martinez called Morgan for Leggett, and Morgan arrived shortly thereafter. Leggett noticed confidential files lying around the office, including files for some clients who she personally knew. Leggett advised Morgan that the files would have to be protected by placing them in a locked file cabinet or locked room. Morgan agreed to remedy the situation and seems to have done so by the date of the final hearing. Files are now being protected from public scrutiny. Each employee of the estimating company has signed a Confidentiality Office Policy agreeing to keep all records of the Center confidential.

14. The third category of violation concerned an adoptive home study for Moody (the same client who had visited the

Center). The home study for this family was also sent in blank template form with instructions to fill it out using the third person. Moody filled out the form and sent it back to Morgan. In April 2006, Moody and her husband were scheduled to attend a meeting with prospective adoptee children at Splitsville, a Tampa bowling alley. In order to attend such meetings, prospective adoptive parents must have a home study completed in advance. This serves the purpose of making sure that such parents actually qualify as adoptive parents before they are exposed to the children.

15. The home study for Moody and her husband was finished by Morgan in time for the Moodys to attend the Splitsville function. Although several home visits were scheduled, each of them was cancelled due to various circumstances. No home visit was ever made. However, the home study was completed and signed by Morgan with a recommendation that the family be approved to adopt. The recommendation section of the home study included as its basis: "Based on MAPP training, personal interviews, home consultations . . .". The home study contains a thorough description of the home, including the pool and yard, presumably based on details provided by the Moodys.

16. Moody decided to terminate her relationship with Morgan and the Center after not hearing from Morgan during the period of July through November. As stated earlier herein,

Moody picked up her file, which included the signed home study, from the Center. Morgan maintains the home study was still a "work in progress" at that time. However, it had already been signed and was dated April 18, 2006. (Moody was scheduled to attend the Splitsville event on April 22, 2007, and would have needed a completed home study in order to attend.)

17. By Morgan's own admission, she was never in the home of Moody and did not "effectively or efficiently manage" that client's case. It was, as Morgan admitted, wrong to sign the home study without having visited the home. It appears the home study was finished so that the family could attend the MAPP event.

18. The next category of violation had to do with lost or misplaced paperwork. A child placing agency must protect all information provided to it by clients so that confidentiality is maintained.

19. LaClair and her husband submitted a large packet of information to Morgan as part of their attempt to adopt a child through the Center. The information was lost or misplaced by the Center on at least two (but possibly three) occasions. The submitted information contained extremely confidential information, including: marriage licenses, divorce decrees, birth certificates, social security numbers, military identification numbers, and insurance information.

20. The last category of violation concerned failure by Respondent to timely provide licenses to approved foster parents. One of Respondent's clients, Barry Plesch, indicated a long interval between verbal approval and receipt of his paper license. However, he could not quantify the number of times nor specifically remember what dates he may have called Respondent to ask about the license.

21. Another client, Brad Farber, made numerous requests for his license. When he expressed an urgent need for it, the license was produced forthwith.

22. On May 17, 2007, Morgan met with representatives of HKI to discuss the Moody home study and the situation relating to confidential records. At that time, Morgan admitted to falsifying the Moody home study. Morgan acknowledged the gravity and severity of that mistake. She did explain that her office was undergoing reorganization at the time of Leggett's visit, which was the reason so many files were lying around the office.

CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes (2007).²

24. Subsection 409.175, Florida Statutes, states in relevant parts:

(1)(a) The purpose of this section is to protect the health, safety, and well-being of all children in the state who are cared for by family foster homes, residential child-caring agencies and child-placing agencies by providing for the establishment of licensing requirements for such homes and agencies and providing procedures to determine adherence to these requirements.

* * *

(2)(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.

* * *

(9)(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.

25. Clearly, Respondent is subject to the provisions of the aforementioned statutory sections.

26. As stated in Subsection 63.162, Florida Statutes, "All papers and records pertaining to the adoption, including the original birth certificate, whether part of the permanent record of the court or a file in the office of an adoption entity are confidential and subject to inspection only upon order of the court. . . ." Respondent's failure to secure the files in its/her custody and to safeguard the information therein is a clear violation of this confidentiality provision.

27. Subsection 63.212(2)(a), Florida Statutes, states:

It is unlawful for any person under this chapter to:

1. Knowingly provide false information; or
2. Knowingly withhold material information.

Also, Florida Administrative Code Rule 65C-15.028, provides:

"The agency shall make an evaluation of the adoptive family before placement of a child, which shall include at least one home visit."

28. By signing a home study which she had admittedly not completed and which did not have the requisite home visit, Morgan knowingly provided false information. Her candid admission of wrong during a meeting with DCF personnel is clear evidence of this violation. As a result, the safety of adopting and foster families and their children was potentially compromised.

29. It is axiomatic that agencies have the right to interpret their own rules. And, the agency's interpretation is entitled to great deference. Palm Beach County Canvassing Board v. Harris, 772 So. 2d 1273 (Fla. 2000); Colonnade Medical Center, Inc., v. State, Agency for Health Care Administration, 847 So. 2d 540 (Fla. 4th DCA 2003). In the instant case, the agency's interpretations of its rules concerning Respondent's actions were reasonable. There is no indication that DCF created or attempted to create a new or modified rule in carrying out its duties in this matter. Rather, existing rules were applied properly and are consistent with DCF's interpretations.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by the Department of Children and Family Services upholding the revocation of Respondent's child-placing agency license.

DONE AND ENTERED this 29th day of November, 2007, in
Tallahassee, Leon County, Florida.

S

R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of November, 2007.

ENDNOTES

^{1/} Morgan maintains that the second home visit could be placed in the same block of the table as the "Inquiry Home Visit." While that may be possible, it is somewhat illogical for two reasons: (1) the block indicates an inquiry, not a final home visit and (2) it ignores the fact that the home study was already signed, suggesting that it was final.

^{2/} Unless stated otherwise herein, all references to Florida Statutes are to the 2007 version.

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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.