

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BEATRICE GUARDIAN ANGEL DAYCARE,

Petitioner,

vs.

Case No. 13-0334

DEPARTMENT OF CHILDREN AND  
FAMILIES,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on May 1, 2013, via video teleconference with sites in Orlando and Tallahassee, Florida. The parties appeared before Administrative Law Judge Lynne A. Quimby-Pennock of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Jacques Lee Cooper, Esquire  
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Orlando, Florida 32835

For Respondent: Stefanie C. Beach, Esquire  
Department of Children and Families  
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STATEMENT OF THE ISSUE

The issue is whether the Beatrice Guardian Angel Daycare violated provisions of chapters 402 and 435, Florida Statutes (2012), and/or Florida Administrative Code Chapter 65C-22, such that its license should not be renewed.

PRELIMINARY STATEMENT

On November 30, 2012, Debra R. Giles executed a document whereby she relinquished her Beatrice Guardian Angel Daycare (the Daycare) License No. C090R0812, located at 623 West Lancaster Road, Orlando, Florida, to the Department of Children and Families (Department or DCF). Despite this relinquishment<sup>1/</sup>, on December 12, 2012, the Department issued a denial of a renewal application for License No. C090R0812, (also called an administrative complaint by DCF), that alleged multiple violations of the regulations governing the operation of a child daycare facility. The Daycare filed a response to the denial letter, which was accepted by the Department as a petition for a formal administrative hearing. On January 15, 2013, the denial letter and the Daycare's response were forwarded to DOAH and assigned to the undersigned. Following one continuance, the case was scheduled to be heard on May 1, 2013, and the final hearing took place on that date.

At the final hearing, the Daycare presented the testimony of three witnesses.<sup>2/</sup> The Daycare did not offer any exhibits.

The Department presented the testimony of five additional witnesses. The Department offered the following exhibits, which were received into evidence: A,<sup>3/</sup> C, E, H,<sup>4/</sup> K through Q, and T through W.<sup>5/</sup>

At the conclusion of the hearing, the parties were advised that their proposed recommended orders (PROs) would be due ten days after the transcript was filed. At the request of the Daycare, on June 6, 2013, a Notice of Filing Transcript was issued following the filing of the two-volume Transcript. On June 17, 2013, the Department's counsel filed a motion for extension of time to file the PROs (motion). The motion failed to comply with Florida Administrative Code Rule 28-106.204(3) and (4). Time was of the essence in rendering a ruling, and upon being contacted by the undersigned's assistant, the Daycare's counsel advised that it did not object to the motion. The motion was granted. Thereafter, each party timely filed its respective PRO, and each has been considered in the preparation of this Recommended Order.

Unless otherwise indicated, all references are to the 2012 version of the Florida Statutes. References to the Florida Administrative Code are to the current version, unless otherwise indicated.

## FINDINGS OF FACT

1. The Department is the state agency responsible for inspecting, licensing, and monitoring child care facilities such as the one operated by the Daycare. It is the Department's responsibility to ensure that all such facilities are safe and secure for the protection of the children utilizing those facilities. The Department inspects each licensed day care center three times a year: two unannounced routine inspections (to ensure compliance with the applicable laws and rules), and one renewal application inspection. In the event of a complaint, additional inspections and/or investigations are conducted.

2. Ms. Giles owned, operated and directed the Daycare. The Daycare located on West Lancaster Road opened in November 2011, and was in continuous operation at all times material.<sup>6/</sup> Ms. Giles opened the Daycare at this particular location after operating it at a different location.

3. Luz Torres is a family service counselor for the Department. Ms. Torres is trained to inspect day care centers for initial applications, renewal applications and routine inspections. Ms. Torres is familiar with the Daycare, having inspected it several times while it was operational.

4. Inspections of the Daycare revealed operational deficiencies during four inspections, dated February 15;

June 20,; July 2,; and November 7, 2012. The specific deficiencies were set forth on inspection reports provided to Ms. Giles at the time of each inspection.

5. Ms. Torres conducted a routine inspection of the Daycare on February 15, 2012 (inspection one). A number of areas of noncompliance areas included physical environmental issues, such as insufficient lighting, gaps in fencing, ground cover for outdoor equipment, and training. Other areas included: a lack of documentation of employee educational courses showing literacy and developmental course training, a 40-hour child care course, and 10 hours of in-service training; items in the first aid kit were missing; deficiencies in food and nutrition, such as unlabeled bottles and sippy cups; and deficiencies in children's health and immunization records, personnel records, and background screening.

6. The Department issued an "Administrative Warning Notification" (notification) to Petitioner based upon the following violations: "[T]he facility's fencing, walls or gate area had gaps that could allow children to exit the outdoor play area. The gate was observed broke [sic] with gaps on both sides." This notification advised Petitioner that the "next violation of a licensing standard outlined in this notice, [would] result in an administrative fine."

7. On June 20, 2012, Ms. Torres conducted a routine inspection (inspection two) of the Daycare. The noncompliant areas included: missing documentation for some children's immunization records; missing documentation of ten hours of in-service training for the Daycare's director; and missing documentation of background screening documents, including an affidavit of good moral character for employees.

8. A second notification<sup>7/</sup> (dated June 20, 2012) was issued to the Daycare following inspection two. This notification involved issues regarding a child's health and immunization records, and missing documentation for employees. One child's immunization records had expired. Four staff members were deficient regarding in-service training logs, and an additional staff member had not received the level two screening clearance.

9. In response to a complaint (complaint one), Ms. Torres conducted an investigation of the Daycare on July 2, 2012. The Daycare was found to be out-of-ratio regarding the number of children to staff, and background screening documentation for level two screening for staff members was missing. In a mixed group of children ages one and two years old, the ratio of one staff for six children is required. At the time of the complaint one investigation, there was one staff per eight children. Although this ratio issue was rectified during the complaint one investigation, it was and is considered a

violation. The documentation for the level two screening violation for the staff was not corrected during this investigation.

10. A third notification was issued to the Daycare following the complaint one investigation. This notification involved the staff-to-child ratio, and the lack of background screening documentation. The Daycare was notified that the appropriate staff-to-child ratio must be maintained at all times, and the missing Level two screening documentation had to be resolved. This notification advised the Daycare that the "next violation of a licensing standard outlined in this notice, [would] result in an administrative fine."<sup>8/</sup>

11. On August 1, 2012, the Daycare was notified that its license would expire on November 29, 2012. The Daycare's renewal application was due 45 days before the expiration date, or before October 15, 2012. The denial letter set forth that the Daycare's renewal application was filed on October 30, 2012.<sup>9/</sup>

12. In June 2012, Ms. Giles became aware that her daughter, Alexis Anderson, had a drug addiction problem when Ms. Anderson's baby was born addicted to drugs. Ms. Anderson and her two children were required to live with Ms. Giles while Ms. Anderson addressed her addiction problem. Ms. Anderson's

two children attended the Daycare. Ms. Anderson would visit the Daycare to see her children.

13. On November 7, 2012, as a result of another complaint (complaint two) being filed, DCF conducted an investigation of the Daycare. Ms. Giles reported that on two different occasions, two small bags were found at the Daycare. One small empty bag was found in the Daycare's common hallway. A second bag was found on a desk in the Daycare's office and contained a white residue.

14. After the second bag was found and Ms. Giles was told by an employee what the bags might be used for ("people transport drugs in"), she suspected that Ms. Anderson might have left the bags at the Daycare. Also, after finding the second bag, Ms. Giles banned Ms. Anderson from the Daycare.

15. There was speculation that the two bags contained an illegal substance; however, the two bags were discarded before any scientific testing could be done or any photographs could be taken. There is simply no proof as to what was in either bag.<sup>10/</sup>

16. There was no clear and convincing evidence that Ms. Anderson supervised or tended to children other than her own while she was at the Daycare. There was clear and convincing evidence that Ms. Anderson was at the Daycare on multiple occasions and had access to every room and child/children there. Ms. Anderson did not have the appropriate level two screening.



17. In addition to investigating complaint two, child care regulations counselor Christina Bryant also observed inadequate ratios between staff and children, and a lack of qualified or unscreened individuals supervising children. Ms. Bryant observed one staff for five children in the zero to twelve month age group (ratio should be one to four), and she observed one staff to nine children, in the one-year-old classroom (ratio should be one staff to six children). Upon completing a review of the Daycare's record keeping, Ms. Bryant also found that background screening documents were missing for staff members.

18. On November 14, 2012, Child Protective Investigator (CPI), Beauford White was directed to go to the Daycare and remove Ms. Anderson's two children from the Daycare.<sup>11/</sup> When CPI White advised Ms. Giles he was removing the children from the Daycare, Ms. Giles became very emotional, and initially told CPI White he could not take the children. CPI White contacted his supervisor who directed CPI White to contact the Orange County Sheriff's Office (OCSO) for assistance in removing the children. Between the time the OCSO was called and when the deputy arrived, approximately 45 to 60 minutes, CPI White had obtained compliance, and Ms. Giles released the two children to his custody.<sup>12/</sup>

19. On Thursday afternoon, November 29, 2012, Ms. Giles was asked to attend a meeting on Friday, November 30, 2012, in

the Department's legal office regarding the Daycare's license. Because of the short notice, Ms. Giles was unable to obtain an attorney to accompany her to the meeting on November 30, 2012. Ms. Giles attended the meeting by herself with a number of Department staff. Ms. Giles was given the following option: execute a relinquishment of the Daycare's license, or the Department would seek to revoke the license. Ms. Giles did not know the law.

20. Ms. Giles executed the relinquishment<sup>13/</sup> of the Daycare's license because she was thinking that "revoke sound[ed] horrible to" her. She did not want to relinquish her license, nor close her business, but she did not feel she had any choice in the matter. The totality of the circumstances under which Ms. Giles found herself renders the "relinquishment" less than voluntary.

21. After this meeting, Ms. Giles returned to the Daycare and was present when Ms. Torres removed the Daycare's license from the wall. Mytenniza Boston, a Daycare employee, was also present when Ms. Torres removed the license. Ms. Giles did not tell Ms. Boston or any of the other Daycare employees that the Daycare's license had been relinquished, nor did she start notifying parents of the Daycare's closing.

22. On Monday, December 3, 2012, around noon, Department investigators arrived at the Daycare and found children in the

opened facility. Ms. Giles was at the Daycare making telephone calls to parents asking them to come pick up their child or children. The Daycare was open for business despite the fact that Ms. Giles had relinquished her license on Friday, November 30, 2012.

23. On occasion Pervis Giles, Ms. Giles' then husband would walk to the Daycare to talk with Ms. Giles. Mr. Giles would also cut the Daycare's grass, unlock the Daycare's door for daily operations, and participate with Ms. Giles in making business decisions about the Daycare. Ms. Giles did not consider these activities to be working for the Daycare; however, common sense dictates otherwise.

24. Ms. Giles has several children. At various times during the Daycare's operation, Ms. Giles' children were at the Daycare volunteering, cleaning up or helping with the Daycare children in some fashion. Ms. Giles' children did not have the required level two background screening as Ms. Giles did not know that her children needed to be screened. Ms. Giles' lack of understanding regarding who is required to be screened is troublesome. Ms. Giles has been in the daycare business for many years, yet she failed to comply with basic safety measures.

#### CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the subject matter and parties to this action

in accordance with sections 120.569 and 120.57(1), Florida Statutes.

26. The Department is the state agency responsible for licensing and regulating daycare facilities. See §§ 402.301-402.319. The Department is authorized to issue a daycare license when specified requirements are met. See § 402.308(3)(d).

27. In this case, the Daycare is seeking renewal of its license, which Ms. Giles relinquished on November 30, 2012. The Department now seeks to deny the Daycare's renewal application based upon alleged violations of chapter 402. The two actions, while inter-related, are distinct actions.

28. Where the Department makes allegations that the applicant engaged in wrongdoing, the burden is on the Department to prove wrongdoing. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). Factual findings based on record evidence must be made indicating how the conduct alleged violates the statutes or rules or otherwise justifies the proposed sanctions. Mayes v. Dep't of Child. & Fam. Servs., 801 So. 2d 980, 982 (Fla. 1st DCA 2001).

29. Generally, a license applicant has the burden to prove by a preponderance that he or she is entitled to the license. See Dep't of Banking & Fin. v. Osborne Stern & Co., at 934. However, where the licensing agency proposed to deny the renewal

of a license based on specific statutory and rule violations, it has the burden to prove those violations. The standard of proof with respect to a contested denial of a day care renewal application is clear and convincing evidence. See Dorothy Coke v. Dep't of Child. & Fam. Servs., 704 So 2d 726 (Fla. 5th DCA 1998). See M. H. v. Dep't of Child. & Fam. Servs., 997 So 2d 755 (Fla. 2nd DCA 2008). See also Davis Fam. Day Care Home, No. 2D12-1191, (Fla. 2nd DCA filed July 17, 2013).

30. Section 402.308 provides in pertinent part:

(1) ANNUAL LICENSING--Every child care facility in the state shall have a license which shall be renewed annually.

\* \* \*

(3) STATE ADMINISTRATION OF LICENSING.—In any county in which the department has the authority to issue licenses, the following procedures shall be applied:

\* \* \*

(b) Prior to the renewal of a license, the department shall reexamine the child care facility, including in that process the examination of the premises and those records of the facility as required under s. 402.305, to determine that minimum standards for licensing continue to be met.

\* \* \*

(d) The department shall . . . renew a license upon receipt of the license fee and upon being satisfied that all standards required by ss. 402.301-402.319 have been

met. A license may be issued if all the screening materials have been timely submitted; however, a license may not be issued or renewed if any of the child care personnel at the applicant facility have failed the screening required by ss. 402.305(2) and 402.3055.

31. Section 402.310 provides the following in pertinent part:

(1)(a) The department . . . may administer any of the following disciplinary sanctions for a violation of any provision of ss. 402.301-402.319, or the rules adopted thereunder:

\* \* \*

3. Deny, suspend, or revoke a license or registration.

(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 or registrant to correct the violation or to remedy complaints.

3. Any previous violations of the licensee or registrant.

(c) The department shall adopt rules to:

1. Establish the grounds under which the department may deny, suspend, or revoke a license or registration or place a licensee

or registrant on probation status for violations of ss. 402.301-402.319.

2. Establish a uniform system of procedures to impose disciplinary sanctions for violations of ss. 402.301-402.319. The uniform system of procedures must provide for the consistent application of disciplinary actions across districts and a progressively increasing level of penalties from predisciplinary actions, such as efforts to assist licensees or registrants to correct the statutory or regulatory violations, and to severe disciplinary sanctions for actions that jeopardize the health and safety of children. . .

(d) The disciplinary sanctions set forth in this section apply to licensed child care facilities, . . .

32. Section 402.305(4) provides in pertinent part:

(4) STAFF-TO-CHILDREN RATIO.—

(a) Minimum standards for the care of children in a licensed child care facility as established by rule of the department must include:

1. For children from birth through 1 year of age, there must be one child care personnel for every four children.

2. For children 1 year of age or older, but under 2 years of age, there must be one child care personnel for every six children.

3. For children 2 years of age or older, but under 3 years of age, there must be one child care personnel for every 11 children.

4. For children 3 years of age or older, but under 4 years of age, there must be one child care personnel for every 15 children.

\* \* \*

7. When children 2 years of age and older are in care, the staff-to-children ratio shall be based on the age group with the largest number of children within the group.

33. Section 402.319(1)(b) provides:

(1) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person knowingly to:

(b) Operate or attempt to operate a child care facility without having procured a license as required by this act.

34. Section 435.05 provides in pertinent part:

Requirements for covered employees and employers. Except as otherwise provided by law, the following requirements apply to covered employees and employers:

(1)(a) Every person required by law to be screened pursuant to this chapter must submit a complete set of information necessary to conduct a screening under this chapter.

\* \* \*

(c) For level 2 screening, the employer or agency must submit the information necessary for screening to the Department of Law Enforcement within 5 working days after receiving it. The Department of Law Enforcement shall perform a criminal history record check of its records and request that the Federal Bureau of Investigation perform a national criminal history record check of its records for each employee for whom the request is made. The Department of Law Enforcement shall respond to the employer or agency, and the employer or agency must inform the employee whether screening has revealed disqualifying information.



35. Section 435.04 provides in pertinent part:

(1)(a) All employees required by law to be screened pursuant to this section must undergo security background investigations as a condition of employment and continued employment which includes, but need not be limited to, fingerprinting for statewide criminal history records checks through the Department of Law Enforcement, and national criminal history records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.

(b) Fingerprints submitted pursuant to this section on or after July 1, 2012, must be submitted electronically to the Department of Law Enforcement.

(c) An agency may contract with one or more vendors to perform all or part of the electronic fingerprinting pursuant to this section. Such contracts must ensure that the owners and personnel of the vendor performing the electronic fingerprinting are qualified and will ensure the integrity and security of all personal information.

(d) An agency may require by rule that fingerprints submitted pursuant to this section must be submitted electronically to the Department of Law Enforcement on a date earlier than July 1, 2012.

(e) Vendors who submit fingerprints on behalf of employers must:

1. Meet the requirements of s. 943.053; and
2. Have the ability to communicate electronically with the state agency accepting screening results from the Department of Law Enforcement and provide a photograph of the applicant taken at the time the fingerprints are submitted.

36. Section 402.3054 provides in pertinent part:

(1) For the purposes of this section, "child enrichment service provider" means an individual who provides enrichment activities, such as language training, music instruction, educational instruction, and other experiences, to specific children during a specific time that is not part of the regular program in a child care facility.

\* \* \*

(3) A child enrichment service provider shall be of good moral character based upon screening. This screening shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter. A child enrichment service provider must meet the screening requirements prior to providing services to a child in a child care facility. A child enrichment service provider who has met the screening standards shall not be required to be under the direct and constant supervision of child care personnel.

37. Rule 65C-22.001(4) (a) (b) provides:

(4) Ratios.

(a) The staff-to-child ratio, as established in Section 402.305(4), F.S., is based on primary responsibility for the direct supervision of children, and applies at all times while children are in care.

(b) Mixed Age Groups.

1. In groups of mixed age ranges, where children under one year of age are included, one staff member shall be responsible for no more than four children of any age group, at all times.

2. In groups of mixed age ranges, where children one year of age but under two years of age are included, one staff member shall be responsible for no more than six children of any age group, at all times.

38. Rule 65C-22.006 provides in pertinent part:

Children's Health Requirements.

(1) General Requirements.

(a) Records required to document compliance with Section 402.305, F.S., and Rules adopted thereunder, shall be maintained at the facility, and shall be available during the hours of operation for review by the licensing authority.

\* \* \*

(2) Children's Health Requirements:

(a) The child care facility is responsible for obtaining for each child in care a current, complete and properly executed Student Health Examination form DH 3040 (June 2002), which is incorporated herein by reference and may be obtained from the local county health department, from the parent or legal guardian or a signed statement by authorized professionals that indicates the results of the components of the Student Health Examination form are included in the health examination. The Student Health Examination shall be completed by a person given statutory authority to perform health examinations.

(c) The child care facility is responsible for obtaining for each child in care a current, complete and properly executed Florida Certification of Immunization form Part A-1, B, or C, DH 680 (April 2009), or the Religious Exemption from Immunization form, DH 681 (July 2008), which are incorporated herein by reference, from the

custodial parent or legal guardian. DH Form 680 and DH Form 681 may be obtained from the local county health department.

Immunizations received out-of-state are acceptable; however immunizations must be documented on the Florida Certification of Immunization form and must be signed by a physician practicing in the State of Florida. Specific immunization requirements are included and detailed in the most current edition of the "Immunization Guidelines-Florida Schools, Child Care Facilities and Family Day Care Homes" as promulgated by the Florida Department of Health.

(3) Enrollment Information. The facility operator shall obtain enrollment information from the child's custodial parent or legal guardian prior to accepting a child in care. This information shall be documented on CF-FSP Form 5219, March 2009, Child Care Application for Enrollment, which is incorporated by reference, or an equivalent form that contains all the information required by the department on CF-FSP Form 5219. CF-FSP Form 5219 may be obtained from the licensing authority or on the department's website at [www.myflorida.com/childcare](http://www.myflorida.com/childcare).

(a) Enrollment information shall be kept current and on file.

(b) The child shall not be released to any person other than the person(s) authorized or in the manner authorized in writing by the custodial parent or legal guardians.

4. Prior to beginning volunteering in a child care facility, a CF-FSP 5217, March 2009, Volunteer Affidavit, which is incorporated by reference, and may be obtained from the department's website [www.myflorida.com/childcare](http://www.myflorida.com/childcare), must be

completed and on file at the child care facility for the volunteer.

(4) Personnel Records. Records shall be maintained and kept current on all child care personnel, as defined by Section 402.302(3), F.S., . . . These shall include:

(a) An employment application with the required statement pursuant to Section 402.3055(1)(b), F.S.

(b) Position and date of employment.

(c) CF-FSP Form 5337, March 2009, Child Abuse & Neglect Reporting Requirements, which is incorporated by reference, must be signed annually by all child care personnel.

(d) Initial Screening. Screening information must be documented on CF-FSP Form 5131, March 2009, Background Screening and Personnel File Requirements, which is incorporated by reference. Screening includes the following:

1. Level 2 screening as defined in Section 435.04, F.S., which includes at a minimum Federal Bureau of Investigations (FBI), Florida Department of Law Enforcement (FDLE), and local law enforcement records checks. For the purpose of issuing a license, any out-of-state criminal offense, which if committed in Florida, would constitute a disqualifying felony offense, shall be treated as a disqualifying felony offense for screening purposes under this rule.

2. An employment history check must include the previous two years, which shall include the applicant's job title and a description of their regular duties, confirmation of employment dates, and level of job performance. Failed attempts to obtain the employment history must be documented in the

personnel file, and include date, time, and the reason the information was not obtained.

3. CF Form 1649A, January 2007, Child Care Attestation of Good Moral Character, which is incorporated by reference, must be completed for all child care personnel annually or in accordance with the local licensing authority. A copy of the CF Form 1649A may be obtained from the department's website at [www.myflorida.com/childcare](http://www.myflorida.com/childcare).

(e) Re-Screening. A screening conducted under this rule is valid for five years, at which time a statewide re-screen must be conducted.

1. The five year re-screen is required for all child care personnel.

2. The five year re-screen must include, at a minimum, statewide criminal records checks through the FDLE and a local criminal records check.

3. CF Form 1649A Child Care Attestation of Good Moral Character must be completed for all child care personnel annually. A copy of the CF 1649A may be obtained from the department's website at [www.myflorida.com/childcare](http://www.myflorida.com/childcare).

4. Re-screening. Re-screening information for all child care personnel must be documented on CF-FSP Form 5131 March 2009, Background Screening and Personnel File Requirements.

5. A copy of all background screening clearance documents for the director and owner must be included in the department's official licensing file or in accordance with the appropriate local licensing agency requirements.

\* \* \*

(f) Copies of training information and credentials as described in subsections 65C-22.003(4), (6) and (7), F.A.C., as applicable.

(g) Driver's license and driver physical examination documentation. A copy of the driver's license and the physician certification, or another form containing the same elements of the physician certification, granting medical approval to operate the vehicle, and valid certificate(s) of course completion for first aid training and infant and child cardiopulmonary resuscitation (CPR) procedures must also be maintained in the driver's personnel file.

39. Any final order denying renewal of the applicant's license must be based solely on the grounds asserted in the denial letter given to the Daycare. See M. H. v. Dep't of Child. & Fam. Servs., supra. "[T]he notice's exclusive focus on 'significant pulling force' as causing a nonaccidental injury precluded DCF from urging negligence as an alternative ground for denying the renewal of the license at the administrative proceeding.") The Department did not allege a lack of timeliness in the filing of the Daycare's renewal application and should not be allowed to allege that as a ground for further sanctions.

40. The Department sustained its burden with respect to the violations as set forth above. The Daycare failed to comply with the statutes and rules governing it. The credible evidence

establishes that there were deficiencies revealed during the routine inspection conducted on February 15, 2012, and those same deficiencies were found again during the June 20, July 2, and/or November 7, 2012, inspections or investigations. These deficiencies were sufficient to warrant the denial of the Daycare's application for renewal of the license.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Children and Families enter a final order DENYING the renewal application.

DONE AND ENTERED this 22nd day of July, 2013, in Tallahassee, Leon County, Florida.



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LYNNE A. QUIMBY-PENNOCK  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of July, 2013.



## ENDNOTES

<sup>1/</sup> The term relinquishment is defined as "A forsaking, abandoning, renouncing, or giving over a right." Black's Law Dictionary 1456(4th ed. 1968). The undersigned can find no authority for the Department to continue the review of the Daycare's renewal application when its owner relinquished the license. However, the circumstances under which Ms. Giles relinquished the license are less than flattering to the Department. The Department, by issuing the denial letter, afforded a point of entry for Ms. Giles to contest the denial.

<sup>2/</sup> The Department listed two of these three witnesses for its own case-in-chief. To provide an orderly hearing flow and allow the Department the opportunity to elicit the direct testimony of each witness, the undersigned allowed the Department's cross examination to go beyond the Daycare's direct examination.

<sup>3/</sup> Exhibit A, when introduced at hearing contained two pages, the front and last. The undersigned noted to the parties there was a page or pages missing. The Department's counsel provided the complete four page Exhibit to DOAH on Friday, May 3, 2013.

<sup>4/</sup> The Daycare objected to Exhibit H.

<sup>5/</sup> Exhibits T through W were hand-drawn during the hearing. The Department's counsel e-filed these four exhibits on Friday, May 3, 2013.

<sup>6/</sup> A different day care center is currently operating in the location where Beatrice Guardian Angel Daycare had operated.

<sup>7/</sup> Although the pagination indicates there were four pages to this notification, only "Page 1 of 4" was within Exhibit M.

<sup>8/</sup> Each notification indicated that a further violation could result in the imposition of a fine. No fines were ever imposed.

<sup>9/</sup> The August 1 notification letter indicates that a fine would be imposed for a late filed renewal application. The December 12, 2012, denial letter did not allege that the renewal application was filed late, nor did it impose a fine for the late filed renewal application.

<sup>10/</sup> The undersigned acknowledges that the DCF complaint report admitted in evidence includes witness statements that Ms. Giles and others recounted to others as to events that occurred. The

complaint reports are hearsay. However, since this case is not criminal in nature, the report falls within the public records hearsay exception in section 90.803(8).

The public record exception is limited to "matters observed pursuant to duty imposed by law as to matters which there was a duty to report." The investigator who wrote the report did not observe the two bags at the Daycare. Records that are not based on the observations of the public official, but "rely on information supplied by outside sources" do not fall within the public records and reports exception to the hearsay rule. Lee v. Dep't of HRS, 698 So. 2nd 1194, 1201 (Fla. 1997); see also M.S. v. Dep't of Child. & Fams., 6 So. 3d 102, 104 (Fla. 4th DCA 2009). Thus, although the direct observations of the investigator are set forth in the report are admissible as an exception to the hearsay rule, the hearsay-within-hearsay statements made by the alleged witnesses do not fall within the hearsay exception. Ms. Giles and Myteenzia Boston testified that they did not know that the white residue was cocaine, but they suspected it was. However, no scientific testing was done to identify the residue.

Even though the complaint and/or investigative report are admissible, the determination of the weight to be given the report, as is the case with all evidence, remains within the province of the trier of fact. There is no clear and convincing evidence that there was cocaine or cocaine residue in either bag.

<sup>11/</sup> It remains unclear why the two children needed to be removed. CPI White's testimony implied that the children should have been staying with another relative per a court order, but no court order or direct testimony was elicited about those circumstances. Further, there was no proof that the children were residing with Ms. Giles, as they were at a day care center during regular working hours. Although DCF's Exhibit A, page two, paragraph one, references "an active dependency court order under chapter 39, Florida Statutes", the exact nature of that order was never divulged.

<sup>12/</sup> Although Ms. Giles and the OCSO Deputy engaged in a verbal altercation with each other, CPI White was satisfied with the children's removal.

13/ The document (Respondent's Exhibit E) reads as follows:

November 30, 2012

I, Debra Giles, do hereby relinquish my child care facility license, License Number C090R0812, Beatrice Guardian Angel Daycare, 623 West Lancaster Road, Orlando, FL 32809. I understand that I have the opportunity to seek legal counsel.

Debra R. Giles [signature]      11-30-12  
Debra R. Giles [printed]      Date

Michelle Stanton      [Notary Stamp]

Witnesses:

[Illegible signature]    [Illegible signature]

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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.