

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF CHILDREN AND
FAMILIES,

Petitioner,

vs.

Case No. 16-0736

SCALLY FAMILY DAY CARE HOME,

Respondent.

_____ /

RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2016), on May 12, 2016, by video teleconference sites in Tallahassee and Orlando, Florida.

APPEARANCES

For Petitioner: Stefanie Beach Camfield, Esquire
Department of Children and Families
Regional Counsel
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400 West Robinson Street
Orlando, Florida 32801-1782

For Respondent: Cherrie Scally, pro se
Scally Family Day Care Home
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STATEMENT OF THE ISSUE

The issue in this matter is whether the Department of Children and Families should deny Respondent's application for registration as a family day care home.

PRELIMINARY STATEMENT

Petitioner, Department of Children and Families (the "Department"), issued an Administrative Complaint on or about November 25, 2015, notifying Respondent, Scally Family Day Care Home ("Respondent"), that the Department was revoking its registration as a family day care home provider pursuant to section 402.310, Florida Statutes (2015).^{1/}

Respondent timely requested an administrative hearing challenging the Department's action. On February 11, 2016, the Department referred the matter to the Division of Administrative Hearings ("DOAH") and requested assignment to an Administrative Law Judge ("ALJ") to conduct an chapter 120, evidentiary hearing.

The final hearing was held on May 12, 2016. The Department presented the testimony of Jessica Baloy, Dinah Davis, and Samantha Wass de Czege. Department Exhibits 1 through 3 were admitted into evidence without objection. Respondent testified on her own behalf. Respondent also presented the testimony of Mia Carla Hagins, Tom Breck, and Mizanne Brown. Respondent Exhibits 1 through 10 were admitted into evidence over the Department's objection.

A one-volume Transcript of the final hearing was filed with DOAH on June 2, 2016. At the close of the hearing, the parties were advised of the ten-day deadline following DOAH's receipt of the hearing transcript to file post-hearing submittals. The Department moved for an additional ten days to file a proposed recommended order, which was granted. Both parties presented post-hearing submittals which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. The Department is the state agency charged with regulating providers that are licensed or registered as family day care homes.

2. Family day care homes must register annually with the Department. See § 402.313(1)(a), Fla. Stat.

3. Respondent is owned and operated by Cherrie Scally. Ms. Scally has registered Respondent as a family day care home since 1997.

4. In or about August 2015, Ms. Scally filed an application with the Department to renew Respondent's registration as a family day care home for 2016. Respondent's registration for 2015 expired on October 30, 2015.

5. Upon receiving Ms. Scally's application, the Department reviewed whether to renew Respondent's registration as a family day care home. As part of its determination, the Department

examined the Florida Central Abuse Hotline Records Search ("CAHRS"). In CAHRS, the Department identified an Investigative Summary involving Respondent that verified a finding of "inadequate supervision" in March 2015.

6. Based on the CAHRS Investigative Summary, the Department issued an Administrative Complaint in November 2015, revoking Respondent's registration as a family day care home.^{2/} The Department determined that it could no longer approve Respondent's registration "based on the verified finding of inadequate supervision."

7. The CAHRS resulted from an incident that allegedly occurred on March 5, 2015. On March 6, 2015, the Central Abuse Hotline received an anonymous phone call reporting an injury to a child at Respondent's family day care home. A four-year-old girl who attended Respondent's family day care home reported to her mother that another child had hurt her.^{3/}

8. Jessica Baloy, a child protective investigator with the Department, was assigned to investigate the incident. Her duties include investigating facilities regarding complaints of child abuse and neglect. Ms. Baloy prepared the CAHRS Investigative Summary.

9. Ms. Baloy visited Respondent's family day care home on March 9, 2015, to investigate the allegation. Ms. Scally informed Ms. Baloy that she had no knowledge of how or when the child was

injured. Ms. Scally did not learn of the incident until the child's mother called her the evening after the child was picked up. Ms. Scally thought that the incident may have occurred in her "playroom" while she was in her kitchen either cleaning up another child or preparing snacks.^{4/}

10. During her visit, Ms. Baloy found that the part of Ms. Scally's home used for childcare consists of two rooms, a "playroom" and a kitchen. The rooms are located next to each other, but a wall separates them. Ms. Baloy observed that the wall obstructs the view between the playroom (where the injury allegedly occurred) and the kitchen where Ms. Scally believes she was located at the time of the incident. Ms. Scally admitted to Ms. Baloy that, while she is able to hear the children in the playroom from the kitchen, she is unable to see directly from the kitchen into the playroom.

11. In her investigation, Ms. Baloy reported that the child had "no indicator" of physical injury. In other words, Ms. Baloy did not find evidence to suggest the child had sustained an injury. Ms. Baloy personally interviewed the child and did not observe any discomfort or physical injuries. Ms. Baloy also received information from the child's mother that a doctor had examined the child and determined that she had not suffered any trauma, just "some irritation." The child's mother decided that no further medical treatment or examination was needed.

12. In her Investigative Summary, Ms. Baloy reported that "[o]bservations of the home daycare were positive that it was not hazardous for the children." Ms. Baloy also declared that Ms. Scally "once notified by a parent completed the proper notifications needed in regards to this incident." However, Ms. Baloy did have "some concerns in regards to supervision." She found that when Ms. Scally was working/standing in her kitchen, she could not view the children in the playroom. Consequently, if something bad happened, she would not be able to see it.

13. Also during her visit to Respondent, Ms. Baloy observed 11 children in Respondent's facility. Consequently, Respondent was over capacity by one child. (As discussed below, family day care homes are restricted to a maximum of ten children at one time.)

14. After her visit, Ms. Baloy closed her investigation with "verified findings for inadequate supervision." Ms. Baloy was not aware of any prior investigations involving Respondent.

15. Dinah Davis is the policy supervisor for the Department's Office of Childcare Regulation. Her responsibilities include approving applications for family day care home registrations with Samantha Wass de Czege, the Department's Director for the Office of Childcare Regulation.

16. Ms. Davis expressed that the Department was concerned with Ms. Baloy's Investigative Summary because the finding of

"inadequate supervision" indicated that Ms. Scally left the children unattended outside of her direct supervision. The Department's "rule of thumb" regarding supervision is that a caregiver must be within "sight and sound of the children and [be] able to respond to emergency situations." Ms. Davis expressed that a constant sightline is crucial to allow the caregiver to respond to and prevent an emergency or potentially harmful situation. Adequate "sight" supervision means that children should be at least within the caregiver's peripheral vision. In addition, Ms. Davis explained that, by statute, no family day care home is allowed to care for more than ten children at one given time.

17. Ms. Davis referred to section 402.310 as the Department's authority to deny Ms. Scally's application. Although section 402.310 allows the Department to place a family day care home registration on probation status, Ms. Davis stated that the Department did not consider the option to place Respondent on probation.

18. Ms. Wass de Czege also testified regarding the Department's decision to revoke (deny) Respondent's application for registration. Ms. Wass de Czege stated that the Department's action was based on the child protective investigator's findings of "inadequate supervision" and overcapacity.

19. Ms. Wass de Czege agreed with Ms. Davis that supervision in a family day care home requires "direct sight and hearing of the children at all times" so that the caregiver is "able to respond to meet the needs of the children." Ms. Wass de Czege explained that based on the floor design of Ms. Scally's home, "she could not have the children in her sight. So, she was not meeting that parameter of the definition of supervision." Ms. Wass de Czege explained that the Department's definition of "inadequate supervision" for family day care homes is found in Florida Administrative Code Chapters 65C-22 and 65C-20.^{5/}

20. Ms. Wass de Czege also remarked that having more than ten children in care at a family day care home is considered overcapacity. Therefore, having 11 children present in the home at the time of Ms. Baloy's visit caused Respondent to be out of compliance with the governing regulation.

21. Ms. Wass de Czege also conveyed that registration of a family day care home is basically a paper process. The applicant submits the paperwork. The Department checks off the information listed in section 402.313(1)(a). If approved, the applicant can care for children. Ms. Wass de Czege commented that, because of a lack of manpower and resources, a registered family day care home is not subject to routine inspections by the Department. Consequently, the Department has little regulatory oversight of Ms. Scally's home.

22. Based on its review of the CAHRS, the Department determined that Respondent failed the background check necessary to register as a family day care home for 2016.

23. Ms. Scally testified on behalf of Respondent at the final hearing. Ms. Scally has operated her family day care home since 1997. She has successfully registered with the state every year since then. She cares greatly for the children entrusted to her. This current matter is the first issue she has encountered regarding her registration.

24. Regarding the incident on March 5, 2015, Ms. Scally did not learn that a child may have been harmed at her home until the child's parent called her that evening to report an injury. The parent relayed that her daughter told her that another child had poked her in a sensitive area, drawing blood.

25. Upon learning of the injury, Ms. Scally immediately took action. That evening, she spoke with the parents of both children involved to make sure all parties were aware of the situation. The next morning, Ms. Scally called the injured child's parent back to inquire of her well-being. Ms. Scally also contacted her own pediatrician seeking advice on the situation. Ms. Scally offered to arrange for her pediatrician to examine the child.

26. Ms. Scally herself was the anonymous caller reporting the incident to the Central Abuse Hotline.^{6/} She called the abuse

hotline on the next morning. (The CAHRS Investigative Summary notes that the call was received on March 6, 2015, at 10:38 a.m.) Ms. Scally called the abuse hotline because she knew reporting the injury was the proper and legally required step to take. Ms. Scally commented that the Department would not have learned of the incident but for her phone call.

27. Ms. Scally conceded that, when she is standing in her kitchen, she does not have a direct line of sight with the children in her playroom. Consequently, Ms. Scally admitted that if the child was injured in the playroom while she was in the kitchen, the child was out of her sight for a short period of time. On the other hand, Ms. Scally asserts that she can always hear her children from the kitchen. Furthermore, no child is ever out of her eyesight for more than a couple of moments. Ms. Scally also represented that she has taken steps to ensure that she can maintain "sight and sound" supervision over her children in the future. She has purchased a mirror to place in the hallway between the playroom and the kitchen. This mirror allows her to see into either room from the other.

28. Ms. Scally stated that in her 19 years of childcare, she has never had any incidents in her family day care home.

29. Ms. Scally acknowledged that she might have had 11 children in her care on the occasion of Ms. Baloy's visit to her home on March 9, 2015. Ms. Scally explained that it was likely

during a "transition" period as her children were being picked up and dropped off and was not a regular occurrence or for an extended period of time.

30. Based on this incident, Ms. Scally asserts that she will be extra cautious about the interactions between the children in her care.

31. Ms. Scally presented testimony from several parents whom she serves. They each asserted that Respondent provides a valuable service, and they trust her with their children in her home. Mia Carla Hagins placed her daughter with Respondent from 2009 through 2014. Ms. Hagins testified that Ms. Scally ensures safety, nurturing, and care for the children she supervises. Thomas Breck placed two children with Ms. Scally from 1996 through 2000. Mr. Breck testified that Ms. Scally provided excellent care and demonstrated complete professionalism. Mizanne Brown placed her child with Ms. Scally for ten years. Ms. Brown testified that Ms. Scally was fabulous, nice, and wonderful.

32. Ms. Scally also produced 26 letters of recommendation from parents and teachers of children for whom she has cared. Ms. Scally asserted that these letters show how positively her community views her, her home, and her childcare services.

33. Based on the competent substantial evidence presented at the final hearing, the Department failed to establish, by a preponderance of the evidence, sufficient grounds to deny

Respondent's application for registration as a family day care home under the provisions of section 402.310. Accordingly, the Department should approve Respondent's application to register as a family day care home.

CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1).

35. A family day care home must be licensed or registered with the Department. See § 402.312(1), Fla. Stat. Family day care homes that are not licensed must register annually. See § 402.313(1)(a), Fla. Stat.

36. The Department, on an annual basis, is required to evaluate the registration system for family day care homes. The Department shall address the number of registered homes, the number of children served in registered homes, and the number, nature, and resolution of any complaints received regarding family day care homes. See § 402.313(10), Fla. Stat.

37. Section 402.310 authorizes the Department to administer disciplinary actions against registered family day care homes for violations of certain statutes or Department rules. Section 402.310(1) states, 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:

1. Impose an administrative fine not to exceed \$100 per violation, per day. However, if 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 in addition to or in lieu of any other disciplinary action imposed under this section.

2. Convert a license or registration to probation status and require the licensee or registrant to comply with the terms of probation. A probation-status license or registration may not be issued for a period that exceeds 6 months and the probation-status license or registration may not be renewed. A probation-status license or registration may be suspended or revoked if periodic inspection by the department or local licensing agency finds that the probation-status licensee or registrant is not in compliance with the terms of probation or that the probation-status licensee or registrant is not making sufficient progress toward compliance with ss. 402.301-402.319.^[7/]

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.^[8/]

* * *

(d) The disciplinary sanctions set forth in this section apply to . . . registered family day care homes.

38. Pursuant to section 39.201(6), Florida Statutes, the Department may use information from a CAHRS report to review an application for registration to operate a family day care home. Section 39.201(6) states, in pertinent part:

Information in the central abuse hotline and the department's automated abuse information system may be used by the department . . . as part of the licensure or registration process pursuant to ss. 402.301-402.319.

39. Respondent challenges the Department's denial of her application for registration as a family day care home. Respondent, as the party asserting the affirmative, carries the ultimate burden of persuasion. Dep't of Child. & Fams. v. Davis Fam. Day Care Home, 160 So. 3d 854, 857 (Fla. 2015); Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla.

1996); Dep't of Transp. v. J. W. C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

40. However, in an application denial proceeding, the agency has the burden to prove the specific acts or violations which it alleges are grounds for the denial. Dep't of Banking & Fin. v. Osborne Stern and Co., 670 So. 2d at 934; see also M.H. v. Dep't of Child. & Fams., 977 So. 2d 755, 761 (Fla. 2d DCA 2008) ("Without question, an applicant for a license has the initial burden of demonstrating his or her fitness to be licensed. Osborne Stern & Co. I, 647 So. 2d at 248. But if the licensing agency proposes to deny the requested license based on specific acts of misconduct, then the agency assumes the burden of proving the specific acts of misconduct that it claims demonstrate the applicant's lack of fitness to be licensed. Osborne Stern & Co. II, 670 So. 2d at 934."); and Comprehensive Med. Access, Inc. v. Off. of Ins. Reg., 983 So. 2d 45, 46 (Fla. 1st DCA 2008) (While the applicant continuously has the burden of persuasion to prove entitlement to be licensed, "the agency denying the license has the burden to produce evidence to support a denial.").

41. An administrative agency's burden of proof in a license application proceeding is governed by the preponderance of the evidence standard. M.H. v. Dep't of Child. & Fams., 977 So. 2d at 761, citing to Osborne Stern & Co. II, 670 So. 2d at 934-35.

42. In determining the appropriate disciplinary action the Department should administer in this matter, the undersigned applies the facts to the guidelines set forth in section 402.310. Section 402.310(1)(a) states that the Department may discipline Respondent "for a violation of any provision of ss. 402.301-402.319, or the rules adopted thereunder."

43. The competent substantial evidence establishes that Respondent committed two violations of the applicable statutes and rules. First, Ms. Scally failed to provide adequate supervision in her family day care home under chapter 65C-20 entitled "Family Day Care Standards and Large Family Child Care Homes." Florida Administrative Code Rules 65C-20.009(5)(a) provides:

(5) Supervision.

(a) At all times, which includes when the children are napping or sleeping, the operator shall remain responsible for the supervision of the children in care and capable of responding to emergencies and the needs of the children During the daytime hours of operation, children shall have adult supervision, which means watching and directing children's activities, both indoors and outdoors, and responding to each child's needs.^[9/]

The evidence in the record establishes, by a preponderance of the evidence, that, on or about March 5, 2015, Ms. Scally failed to adequately watch and direct her children's activities and respond to each child's needs. The evidence supports the Department's allegation that a child sustained an injury (however slight) while

in Ms. Scally's care. At the time the incident most likely occurred, Ms. Scally was not in a position to actively monitor her children's activities. Consequently, Ms. Scally failed to provide supervision "capable of responding to emergencies and the needs of the children." Although the undersigned has little doubt that Ms. Scally would have reacted swiftly and appropriately to prevent or address the situation had she observed the incident, the fact is that she did not. Accordingly, Ms. Scally violated rule 65C-20.009(5) (a).^{10/}

44. The evidence in the record also establishes a second violation, by a preponderance of the evidence, that, on or about March 9, 2015, Respondent's facility was overcapacity by one child (11 children instead of ten). Section 402.302(8) states, in pertinent part:

(8) "Family day care home" means an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit A family day care home shall be allowed to provide care for one of the following groups of children, which shall include household children under 13 years of age:

* * *

(d) A maximum of 10 children if no more than 5 are preschool age and, of those 5, no more than 2 are under 12 months of age.

45. Ms. Scally testified that the only reason 11 children were present in her home at one time was during a "transition" period when children were being dropped off and picked up. The applicable statute does not appear to provide for an exception to the ten children maximum. Consequently, Ms. Scally violated section 402.310(8).

46. Upon finding a violation of an applicable statute or Department rule, the Department may administer any of the following disciplinary sanctions:

1. Impose an administrative fine not to exceed \$100 per violation, per day;
2. Convert a registration to a six month probation status and require the registrant to comply with the terms of probation; or
3. Deny, suspend, or revoke a registration.

See § 402.310(1)(a).

47. The Department seeks to deny Respondent's application-- the harshest sanction. The evidence in the record does not support denial of Respondent's registration.

48. To determine the appropriate disciplinary action to take against Respondent, section 402.310(1)(b) requires the Department to consider the following factors:

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.

49. Based on the above three factors, the competent substantial evidence in the record does not support denial of Respondent's registration. First, the facts do not establish a "severe" violation. The Department produced (hearsay) evidence that a child suffered "some irritation" at Ms. Scally's home on March 5, 2015. The Department investigator found "no indicator" of physical injury. No medical records or testimony were produced showing that the child will face "the probability of death or serious harm." There is no evidence that any other child under Ms. Scally's supervision has ever experienced "actual or potential harm." Ms. Baloy specifically reported that Ms. Scally's home "was not hazardous for the children."^{11/}

50. Second, upon learning of the injury, Ms. Scally reacted swiftly, properly, and conscientiously. Once informed of the possible injury, Ms. Scally immediately offered assistance to ensure the child's health and safety. Ms. Scally herself helped arrange for the child to receive medical care. Ms. Scally also contacted the parents of both of the children involved in the incident to fully discuss the situation. Finally, Ms. Scally

promptly reported the incident to Central Abuse Hotline. At no point did Ms. Scally attempt to cover up or minimize the incident. As Ms. Baloy specifically found, Ms. Scally "once notified by a parent completed the proper notifications needed in regards to this incident."

51. Finally, the Department did not produce evidence of any previous violations by Respondent of the pertinent statutes or Department rules. In her 19 years as a registered family day care home, this incident is the first and only reported instance of Ms. Scally's alleged inadequate supervision.

52. Therefore, in applying the factors set forth in section 402.310(1)(b) that the Department is required to consider in determining disciplinary action, the competent substantial evidence in the record does not support denial of Respondent's application--the most extreme sanction--as the appropriate disciplinary action for Respondent.^{12/} See Comprehensive Med. Access, 983 So. 2d at 46 (An agency "may not deny a license application unless the decision is supported by competent substantial evidence.").

53. Consequently, while the Department met its burden of proving specific violations of a Florida statute and rule, the evidence does not support denial of Respondent's application for registration as a family day care home. Accordingly, Respondent

carried the ultimate burden of persuasion by proving that it is entitled to register as a family day care home.^{13/}

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 approving Respondent's application for registration as a family day care home.

DONE AND ENTERED this 2nd day of August, 2016, in Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of August, 2016.

ENDNOTES

^{1/} The Administrative Complaint incorrectly notified Respondent that the Department was taking action "to revoke" Respondent's family day care home registration. The Department initiated its review of Respondent's annual registration prior to its (then current) October 30, 2015, expiration date. Consequently, once the Department decided to deny Respondent's registration, it prepared an Administrative Complaint in the form of a revocation action. The Department, however, did not finalize and issue the

Administrative Complaint until on or about November 25, 2015-- several weeks after Respondent's registration had expired. Consequently, at the final hearing, the Department represented that its "revocation" action should be considered a "denial" of Respondent's renewal application. Respondent, at the final hearing, agreed to waive any objections to the timeliness, notice, or validity of the Administrative Complaint and proceed with the evidentiary hearing.

^{2/} See endnote 1 above.

^{3/} The Department offered evidence and testimony regarding how the incident allegedly occurred, not in an effort to prove the cause of the child's injuries, but to show Ms. Scally's general supervisory practice within her home. The undersigned makes no findings of fact regarding the child's alleged injury on March 5, 2015. The relevant information taken from the CAHRS is that the Central Abuse Hotline received information of possible abuse or neglect at Respondent's facility. This call led to Ms. Baloy's subsequent inspection and observation of Respondent's facility and Ms. Scally's supervisory methods and techniques.

^{4/} At the final hearing, Ms. Baloy testified that she conducted a one-on-one, unsworn interview with the child. Ms. Baloy referred to the child's statements in the Investigative Summary and in her testimony. The child's statements are hearsay. See § 90.801(1)(c), Fla. Stat. Under the Administrative Procedure Act, "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." § 120.57(1)(c), Fla. Stat. As stated above, the undersigned makes no findings of fact based on the child's unsworn, hearsay statements.

^{5/} Ms. Wass de Czege stated that the child protective investigator's definition of "inadequate supervision" is found in rules and regulations regarding section 39, Florida Statutes.

^{6/} See section 39.201(1)(a), which states:

Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no

parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

^{7/} See also Rule 65C-20.012(1)(b), which provides:

“Probation” is a licensing status indicating the license is in jeopardy of being revoked or not renewed due to violations within the control of the provider. Probation may require the licensee to comply with specific conditions intended to ensure that the licensee comes into and maintains compliance with licensing standards. Examples of such conditions are: a deadline to remedy an existing violation, a specified period during which compliance with licensing standards must be strictly maintained; and, specified conditions under which the home must operate during the probationary period.

^{8/} Section 402.310(1)(c)2. instructs the Department to adopt rules to:

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, such as for the deliberate misuse of medications. The department shall implement this subparagraph on January 1, 2007, and the implementation is not contingent upon a specific appropriation.

The Department did not introduce evidence or testimony of a Department rule that establishes a uniform system of procedures to impose disciplinary sanctions or provides a consistent

application of disciplinary actions or progressive increasing levels of penalties for denial of a registration. Consequently, the undersigned's analysis of the appropriate disciplinary action in this matter is based directly on the provisions of section 402.310.

^{9/} See also rule 65C-22.001(5)(a), which provides the same definition of "supervision" under the "General Information" for child care standards.

^{10/} The Department witnesses both testified that a family day care home provider must be within "sight and sound of the children." The only specific reference to "sight and sound" supervision for a family day care home is found in rule 65C-20.009(5)(b) which provides, "A child who has been placed in an isolation area due to illness as stated in paragraph 65C-20.010(4)(b), F.A.C., must be within sight and hearing of the operator." No evidence demonstrated that the child allegedly injured in Respondent's facility was in an isolated area due to illness. Nevertheless, the evidence in the record does support the Department's allegation that Ms. Scally failed to provide supervision "capable of responding to emergencies and the needs of the children" under rule 65C-20.009(5)(a).

^{11/} The fact that Ms. Scally situated her childcare area in two rooms that are separated by a wall does not violate rule 65C-20.009(5)(a), as long as Ms. Scally supervises her children in a manner that ensures she is "capable of responding to emergencies and the needs of the children."

^{12/} The undersigned concludes that the evidence in the record does not support denial of Respondent's application for registration. That being said, the undersigned observes that, of the disciplinary sanctions available to the Department, the most appropriate penalty would be to approve Respondent's registration for a six-month probation period--subject to periodic inspections to ensure compliance with applicable statutes and Department rules. Ms. Scally has credibly and persuasively shown that she can and will correct the violations noted in the CAHRS Investigative Summary from March 2015. The undersigned is not sympathetic to the Department's testimony that it does not have the manpower to regularly inspect family day care homes. Florida statutes and Department rules clearly establish probation as a sanction that the Department must consider, and be prepared to offer, for family day care home registrants. See § 402.310(1)(a)2. and rule 65C-20.012(1)(b). If probation is the appropriate sanction based on factors

contained in section 402.310(b), then the issue of whether or not the Department has available resources to inspect Respondent for six months should not be held against Ms. Scally.

^{13/} See endnote 12 above. Based on the evidence in the record, the most appropriate sanction would be to approve Ms. Scally's application, but convert her registration to a six-month probation-status and require her to comply with the terms of probation.

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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.