

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF CHILDREN AND  
FAMILIES,

Petitioner,

vs.

Case No. 19-4975

FLORINE POPE, D/B/A POPE FAMILY DAY  
CARE HOME,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on February 24, 2021, via Zoom teleconference, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge (“ALJ”) of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner: Jane Almy-Loewinger, Esquire  
Department of Children and Families  
210 North Palmetto Avenue, Suite 447  
Daytona Beach, Florida 32114

For Respondent: Terrill L. Hill, Esquire  
Terrill L. Hill, P.A.  
702 North 19th Street, Suite E  
Palatka, Florida 32177

STATEMENT OF THE ISSUES

The issues in this proceeding are whether Respondent, the owner/operator of a family day care home, committed the violations alleged in the Administrative Complaint and, if so, what is the appropriate sanction for those violations.

## PRELIMINARY STATEMENT

On August 6, 2019, Petitioner, Department of Children and Families (“Petitioner” or “DCF”), issued a three-count Administrative Complaint against Respondent, Florine Pope d/b/a Pope Family Day Care Home. All three counts involved a single incident in which a child attending Ms. Pope’s day care home was found to be injured. The Administrative Complaint imposed a civil penalty of \$500.00 and suspended the license of the day care home. Ms. Pope timely contested the Administrative Complaint, which resulted in this proceeding.

Count 1 of the Administrative Complaint alleged that Ms. Pope violated section 2.3 (A), (B), and (F) of the Family Day Care Home and Large Family Child Care Home Handbook (the “Handbook”), adopted by reference in Florida Administrative Code Rule 65C-20.008(7). The cited provision sets forth allowable and prohibited forms of discipline to be employed in day care homes. If proven, this allegation would constitute a Class I violation of the child care licensing standards set forth in rule 65C-20.012(1)(e).

Count 2 of the Administrative Complaint alleged that Ms. Pope violated section 6 (A) of the Handbook, which sets forth the supervision responsibilities of the operator of a day care home. If proven, this allegation would constitute a Class I violation.

Count 3 of the Administrative Complaint alleged that Ms. Pope violated section 9.2 (A) of the Handbook, which prohibits “acts or omissions that meet the definition of child abuse or neglect,” and provides that failure to perform the duties of a mandatory reporter constitutes a violation of the standards set forth in sections 402.301 through 402.319, Florida Statutes. If proven, this allegation would constitute a Class I violation.

On August 19, 2019, Respondent timely filed a handwritten notice that she was “appealing” the Administrative Complaint. Through counsel, Respondent filed an Amended Request for Administrative Hearing on August 24, 2019. On September 17, 2019, the matter was referred to DOAH for a formal evidentiary hearing.

The case was scheduled for hearing on November 13, 2019. The hearing was convened as scheduled but was continued based on the parties’ agreement that more time was needed to complete discovery and allow the hearing to proceed in an orderly fashion. Several status reports were filed as the parties attempted to schedule depositions and complete discovery. At length, the final hearing was scheduled for April 20, 2020, in the Putnam County Courthouse in Palatka.

On March 13, 2020, the Florida Supreme Court issued its first order suspending grand jury proceedings, jury selection proceedings, and criminal and civil jury trials. As the COVID-19 pandemic progressed, it became apparent that an in-person hearing at the Putnam County Courthouse or any other public facility would not be possible on April 20, 2020. DOAH quickly shifted the bulk of its caseload to Zoom hearings to minimize the exposure of parties, witnesses, judges, and staff to the COVID-19 virus. However, the parties to this proceeding were convinced that an in-person hearing was essential to allow the undersigned to assess witness demeanor. The scheduling of the hearing was pushed back several times as the parties waited for the courthouse or some other acceptable facility to become available for an in-person hearing. As public facility closures continued to be extended, the hearing was ultimately scheduled for February 24, 2021, via Zoom teleconference, on which date it was convened and completed.

At the hearing, Petitioner presented the testimony of Susin Peterson, a DCF Childcare Licensing Counselor; and of Teresa Jellison, a DCF Child Safety Investigation Supervisor. Petitioner's Exhibits 1 through 6 were admitted into evidence. Respondent testified on her own behalf and presented the testimony of Diane Jenkins, owner of Live Care Daycare Learning Center in Palatka. Respondent offered no exhibits.

The one-volume Transcript of the hearing was filed at DOAH on March 3, 2021. The parties timely filed their Proposed Recommended Orders on March 12, 2021.

The events at issue in this proceeding occurred on May 29, 2019. This proceeding is governed by the law in effect at the time of the commission of the acts alleged to warrant discipline. *See McCloskey v. Dep't of Fin. Servs.*, 115 So. 3d 441 (Fla. 5th DCA 2013). Accordingly, all statutory and regulatory references shall be to the 2019 versions, unless otherwise noted.

#### FINDINGS OF FACT

Based on the evidence adduced at hearing, and the record as a whole, the following Findings of Fact are made:

#### PARTIES

1. DCF is authorized to regulate child care facilities pursuant to sections 402.301 through 402.319. Section 402.310 authorizes DCF to take disciplinary action against child care facilities for violations of sections 402.301 through 402.319.

2. Respondent, Florine Pope, is the owner and operator of the Pope Family Day Care Home in Palatka. Ms. Pope has been in the day care business for at least 30 years.

### UNDISPUTED FACTS

3. A.S. was a three-year-old boy who attended Ms. Pope's family day care home with his twin brother. On the afternoon of May 29, 2019, the twins' father, Eric Spell, picked up the boys at the day care. He took them to his car but then walked back into the day care to ask Ms. Pope about bruises on A.S. Ms. Pope told Mr. Spell that she had no idea how the child got bruised unless it was from fighting with his twin brother. A.S. and his brother were barely verbal and were unable to say how or by whom A.S. was injured.

### FACTS IN DISPUTE

4. Ms. Pope disputes virtually every other aspect about DCF's case, both because she asserts her innocence and because the case is largely based on hearsay documents. The written investigative summary written by Child Protective Investigator ("CPI") Storm Dixon was admitted into evidence only as a hearsay document because Ms. Dixon did not testify. Likewise, the interview report of the Child Protection Team ("CPT") was admitted as a hearsay document. DCF's witness, Teresa Jellison, was present as an observer during the CPT's interview of the twins' mother, Robin Durden, but Ms. Jellison was not part of the CPT and did not participate in writing the report.

5. DCF's involvement began with a report that was phoned in on the Florida Abuse Hotline. According to the Investigative Summary, the hotline report stated:

[A.S.] was picked up from daycare on 5/29/19 from the Pope Family Daycare. [A.S.] was observed to have bruises on his face, neck, back, and shoulders when the father picked [A.S.] up from the daycare. It is believed that the injuries occurred at the daycare. [A.S.] was taken to Putnam Regional Medical Center and law enforcement was contacted.

6. Teresa Jellison is a CPI Supervisor for DCF. Ms. Jellison testified that when a hotline call is routed from Tallahassee to the county DCF office, she assigns a CPI to investigate. She first meets with the CPI to go over the allegations and the history of the facility. They make a game plan for the investigation, then the CPI goes out to investigate.

7. Ms. Jellison testified that in this case, the parents had taken A.S. to the hospital. Because of the child's injuries, DCF conducted an investigation of the parents. DCF closed the case with "no indicators," meaning that it concluded the parents were not responsible for A.S.'s injuries.

8. Ms. Jellison stated that her office next received an institutional report on the licensed day care that named Ms. Pope as the alleged perpetrator. Ms. Jellison assigned CPI Storm Dixon to investigate the family day care home. Law enforcement and the Jacksonville area CPT were also notified. The child was transported to Jacksonville for an examination by the CPT.

9. Ms. Jellison testified that she was present when the CPT examined the child's injuries. Ms. Jellison testified that the CPT concluded the injuries, especially a large bruise on the back of A.S.'s neck, were so deep and extensive that another three-year-old child could not have inflicted them. The bruising on the child's back and face had loops suggestive of a cord. The bruise on the back of the neck indicated blunt force.

10. Ms. Jellison was present when the CPT interviewed Ms. Durden, who denied responsibility for A.S.'s injuries. Ms. Durden also told the CPT that her cousin had removed her child from Ms. Pope's family day care home because of unexplained bruises on his legs.

11. Ms. Jellison conceded that there were no witnesses to support the allegation that the bruises on A.S. were inflicted by Ms. Pope, but stated that this was a "highly suspected plausible" explanation for A.S.'s injuries.

12. Ms. Jellison testified that she reviewed Ms. Pope's licensure file and found a 2013 investigative summary of an incident in which Ms. Pope spanked a two-year-old girl with a rubber ruler on her bare bottom. DCF

concluded that the findings were verified when Ms. Pope admitted to spanking the child. The spanking left some bruising that healed. Ms. Pope was cited for a Level II violation of inappropriate discipline. No civil penalty was imposed. DCF concluded that this was an isolated incident with low concerns for the overall safety of the children in the facility.

13. The 2013 investigative summary referenced a felony child abuse case brought against Ms. Pope in 1998 that was dismissed by the prosecutor with no charges filed. Ms. Pope testified that the case involved bruises on a child's leg. However, the factual allegations made against Ms. Pope in 1998 were not presented at the hearing.

14. Susin Peterson works in child care licensing for DCF and was the counselor for Ms. Pope's day care home. She testified that the complaint about A.S.'s injuries was made on the hotline on Friday, May 31, 2019. Ms. Peterson visited the day care home on the following Monday, June 3, 2019. She reviewed the allegations with Ms. Pope, who denied that she had done anything to cause the child's injuries. Ms. Pope told Ms. Peterson that A.S. and his twin brother played rough and the bruises must have come from that. Ms. Peterson testified that the decision to charge Ms. Pope with a failure to supervise was based on Ms. Pope's admission that she did not know how A.S. came by his bruises.

15. Ms. Peterson noted that a child can get hurt even with adequate supervision, but that the day care provider still should file an incident report. Ms. Peterson stated that Ms. Pope's failure to make an incident report was another factor in the decision to charge her with inadequate supervision. Regardless of Ms. Peterson's testimony on this point, it must be noted that the factual allegations of the Administrative Complaint do not include an allegation that Ms. Pope failed to exercise her duty to report A.S.'s injuries.

16. Ms. Peterson did not interview A.S.'s parents.

17. Photographs of the child's injuries taken by CPI Dixon were entered into evidence. Ms. Peterson testified that these photos gave "a pretty good

indication” of how the child was injured. Based on the photographs and the investigative summary, Ms. Peterson concluded that a belt or an extension cord was used to strike the child.

18. The photographs show looping superficial abrasions and bruises on the child’s hairline, on his forehead near the right brow, on his right cheek, and behind his right ear. Similar bruising appears on his right shoulder. One large, deep bruise runs down the middle of the back of his neck.

19. Ms. Peterson testified that she has known Ms. Pope for about four years. She has visited Ms. Pope’s home several times for inspections, most recently on March 19, 2019. The home is clean and has always passed inspection.

20. Ms. Peterson opined, without substantiation, that Ms. Pope is a child care provider who will go for long periods of time with no negative incidents then lose self-control when a child misbehaves and inflict abusive punishment on the child. Because of the incident in this case, and Ms. Pope’s history of previous incidents, Ms. Peterson asserted that Ms. Pope should not be allowed to reopen her family day care home.

21. Ms. Jellison testified that she was the person who went out to the day care home to shut it down after the investigation concluded that Ms. Pope was responsible for the child’s injuries. She told Ms. Pope that she needed to call the parents to come pick up their children. Ms. Jellison waited while Ms. Pope made the calls and the parents arrived.

22. Ms. Jellison found it notable that the six children in the day care, all ages two and three, sat at a table with their hands folded. They did not play with toys. They either watched television or sat without moving. They did not get out of their chairs and did not speak. Ms. Jellison believed that the children were afraid of Ms. Pope.

23. Ms. Jellison testified that while they waited for the parents to come, she asked Ms. Pope about A.S.’s injuries. Ms. Pope told her that she did not



notice the bruises while the child was with her and could only think that A.S. was hurt wrestling with his brother.

24. Ms. Pope testified that she has cared for A.S. and his twin brother since they were infants and that she cared for their eight-year-old sister before that. She potty trained both boys.

25. Ms. Pope testified that she had had a problem with the childrens' father, Eric Spell, when she was caring for his daughter. The child had disobeyed Ms. Pope's admonition to stop running on the driveway. She disobeyed, fell, and hurt herself. This angered Mr. Spell. Ms. Pope testified that another day care provider called her and said that Mr. Spell was trying to place the child in her facility because Ms. Pope was "fing up his daughter." Ms. Pope stated that she phoned Ms. Durden and told her she did not like the way Mr. Spell was talking about her, and that Ms. Durden should take her child elsewhere. Ms. Pope testified that she continued to keep the child only because Ms. Durden tearfully begged her to.

26. Ms. Pope testified that she does not perform a physical examination on every child when they arrive at the day care. If the child is potty trained and goes to the bathroom without assistance, Ms. Pope does not inspect beneath their clothes for bruising.

27. Ms. Pope testified that A.S. and his twin brother were about three years old on May 29, 2019. She stated that neither boy was verbal and that she had spoken to Ms. Durden about the boys being behind in their speech. Ms. Durden told her that the boys were getting speech therapy. Ms. Pope was skeptical because the boys were with her all day during the week.

28. Ms. Pope testified that the boys fought "like pit bulls." She stated that their fighting went beyond normal roughhousing. They would hit each other with whatever they happened to have in their hands. In 30 years of operating a day care, Ms. Pope had never seen two siblings fight as A.S. and his brother did. The only way Ms. Pope could keep them from fighting was to separate them.

29. Ms. Pope testified that she had told Ms. Durden that she could not continue to keep the boys if their constant fighting persisted. Ms. Durden would admonish the boys not to fight at the day care but it did little good. Ms. Durden told Ms. Pope that the boys also fought at home. Mr. Spell's reaction when Ms. Pope complained about the fighting was to say, "boys will be boys."

30. Ms. Pope stated that when she made lunch in the kitchen for the children, they engaged in free play in the day care area. The kitchen was just off, and within sight, of the room used for the day care. Preparing the lunch required Ms. Pope to momentarily leave the children out of her view, but she could easily hear what they were doing.

31. On May 29, 2019, while she was preparing lunch in the kitchen, Ms. Pope heard one of the children cry out. She stepped back into the day care and saw A.S. and his brother fighting. A.S. was lying on the floor. His brother was on top of him holding a toy fire truck. Ms. Pope took the fire truck away and separated the boys.

32. Ms. Pope testified that when Mr. Spell came to pick up the boys that afternoon, she told him they had been fighting again. Mr. Spell did not react to that information. He signed the boys out and left the day care.

33. Ms. Pope looked out the window and saw Mr. Spell coming back to the door with A.S. She began looking around, thinking that he was coming back for something that he had accidentally left behind. Mr. Spell came in and asked Ms. Pope how A.S. got the bruise on his face. She told him again that the boys had been fighting. Ms. Pope said that Mr. Spell just mumbled to himself and left.

34. Ms. Pope testified that she did not see the bruise on A.S. until Mr. Spell brought him back to the house. She stated that the children lie down for a nap after lunch. They were just waking up when Mr. Spell arrived to pick up his sons.

35. Ms. Pope testified that sometime later a policeman came to her home. He told her that A.S. had been taken to the hospital and that he was investigating the case. Ms. Pope told him that the boys had been fighting and that when they fight, they fight hard.

36. She stated that the police later executed a search warrant at her home. She cooperated fully. The officers took her two flyswatters and “a cord like you would hook to the television for cable or something.” Ms. Pope told them to take the toy fire truck because she surmised that to be what caused A.S.’s injuries.

37. Ms. Pope related her version of the day Ms. Jellison came to close down the day care. Ms. Pope denied that she forced the children to sit at the table with their hands folded. Ms. Pope testified that she had the television on to keep the children still while she called their parents. She stated that the children were not used to strange people being at the day care and that they could see that she was nervous. One of the children started crying and Ms. Jellison picked him up.

38. Ms. Pope testified that she self-reported the 2013 incident. Ms. Pope stated that the child’s mother had given her permission to spank the child with a ruler or paint stirrer as the mother herself did at home. On the day in question, Ms. Pope had repeatedly warned the child to stop throwing wooden blocks. The spanking occurred after the child threw a block that hit another child in the forehead. Ms. Pope testified that she called the child’s mother and told her about the spanking. The mother did not seem to mind. Ms. Pope told the truth to the DCF investigator. She did not spank the child again after the incident.

39. Ms. Pope adamantly denied ever beating a child with an extension cord or a belt. “Jesus, no. No. that’s not me. I can’t even imagine somebody beating a child with an extension cord or a belt buckle of a belt.” She stated that nothing ever goes smoothly in child care but that she has never become so frustrated or angry that she would beat a child in that manner.

40. Ms. Pope's ordinary disciplinary method is to place a child in the "think about" chair. She tells the child to sit there and think about what they did. She later comes back and asks the child to tell her why they did it. Ms. Pope stated that the usual reply is a shrug or "I don't know."

41. Ms. Pope stated that she used the "think about" chair even with nonverbal children. A child such as A.S. could understand what she was saying and could shake his head when she asked if he was going to do the bad behavior again.

42. Ms. Pope testified that she has been honest with DCF about everything throughout its investigation. She cautions parents that she has to go to the bathroom and has to make lunch in the kitchen and that she cannot take the children into either place. It is her understanding of DCF's standards that she may be in the kitchen so long as she can see or hear the children. She testified that she could always hear the children even if she could not see them while making lunch.

43. Diane Jenkins, owner of Live Care Daycare Learning Center in the Palatka Mall, testified on behalf of Ms. Pope. Ms. Jenkins testified that she knows Ms. Pope well enough to wave at her when they are both picking up children in their vans. Ms. Jenkins's day care is licensed for 70 children, but she started out by operating a family day care home similar to Ms. Pope's.

44. Ms. Jenkins testified that home day cares are usually operated by a single person who must leave the children somewhat unattended while making lunch. The operator tries to get the children situated, ideally sitting at a table. The operator then keeps the children within sight and sound while turning her back to prepare the lunch.

45. Ms. Jenkins testified that she provided day care for A.S. and his brother from June 24, 2019, until the COVID pandemic started in March 2020. She stated that the brothers are close but they cannot get along. They are "real hyper" and competitive with each other. They like to play with each

other but they have anger issues. They get so angry with each other that they actually growl. They cannot control their tempers.

46. Ms. Jenkins testified that for a time she kept the boys completely separated, with different teachers. She had conversations with their parents about their behavior. Ms. Durden told Ms. Jenkins that she wanted the boys together but Ms. Jenkins replied that was impossible because of the fighting.

#### ULTIMATE FINDINGS

47. In summary, it is found that the evidence was insufficient to establish that A.S.'s injuries were inflicted by Ms. Pope.

48. Ms. Pope was the only witness with direct knowledge of the events of May 29, 2019. The undersigned found her to be a credible and truthful witness. Ms. Pope admitted to spanking a disobedient child in 2013 but credibly denied ever losing her temper and beating a child in a manner that would cause the bruising suffered by A.S. In more than 30 years of operating a day care, Ms. Pope had a disciplinary record that included only the 2013 spanking and a 1998 abuse allegation, the specifics of which were not detailed in the record, that was dropped by the prosecutor.

49. The undersigned finds it unlikely, but not impossible, that A.S.'s injuries could have been caused by his brother in the short time that Ms. Pope took her eyes off the children to prepare lunch. Even accepting that the twins fought fiercely, it strains belief that a three year old wielding only a toy truck could inflict the deep bruises on A.S.'s neck or the looped bruises on his face.

50. The other possibility is that the injuries did not occur at the day care but elsewhere, such as at the child's home. Neither parent testified at the hearing. The record does not include affidavits or other hearsay statements made directly by the parents. Rather, the only evidence presented by DCF regarding the parents was hearsay within hearsay: the CPT's narrative of its

interview with Ms. Durden. No member of the CPT was called as a witness to testify about the contents of the CPT report.

51. Ms. Jellison testified that DCF investigated the parents and closed the case with no indicators, but the record is devoid of any information about this investigation. DCF clearly believed the parents, but DCF's conclusion on that point exists in an evidentiary void. No one who spoke directly to Mr. Spell or Ms. Durden about these events testified at the hearing. No DCF employee involved in the investigation of the parents testified.

52. Based on the evidence presented, one might conclude it was more likely than not that the child was injured at Ms. Pope's family day care home. However, DCF's burden in this case is to prove the facts alleged in the Administrative Complaint by clear and convincing evidence. The credible, admissible evidence fell well short of that mark.

#### CONCLUSIONS OF LAW

53. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

54. DCF is the state agency granted the responsibility of licensing child care facilities. §§ 402.301-319, Fla. Stat. DCF's duties include responsibility for imposing sanctions for violations of statutes or rules. § 402.310, Fla. Stat.

55. This is a proceeding in which DCF seeks to discipline Ms. Pope's license. Because disciplinary proceedings are considered to be penal in nature, DCF is required to prove the allegations in the Administrative Complaint by clear and convincing evidence. *Dep't of Banking & Fin. v. Osborne Stern & Co., Inc.*, 60 So. 2d 932 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

56. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a

reasonable doubt.” *In re Graziano*, 696 So. 2d 744, 753 (Fla. 1997). The Florida Supreme Court further enunciated the standard:

This intermediate level of proof entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

*In re Davey*, 645 So. 2d 398, 404 (Fla. 1994) (quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)). “Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous.” *Westinghouse Elec. Corp. v. Shuler Bros.*, 590 So. 2d 989 (Fla. 1st DCA 1991).

57. Sections 402.301 through 402.319 establish “statewide minimum standards for the care and protection of children in child care facilities, to ensure maintenance of these standards, and to approve county administration and enforcement to regulate conditions in such facilities through a program of licensing.” § 402.301(1), Fla. Stat.

58. Pursuant to its authority under section 402.310, DCF has promulgated chapter 65C-20 for the licensure and regulation of family day care and large family day care homes. Rule 65C-20.012 sets forth the enforcement standards for these facilities.

59. Section 402.310 and rule 65C-20.012 are penal in nature and must be strictly construed, with any ambiguity construed against DCF. Penal statutes

must be construed in terms of their literal meaning, and words used by the Legislature may not be expanded to broaden the application of such statutes. *Beckett v. Dep't of Fin. Servs.*, 982 So. 2d 94, 100 (Fla. 1st DCA 2008); *Latham v. Fla. Comm'n on Ethics*, 694 So. 2d 83 (Fla. 1st DCA 1997).

60. The allegations set forth in the Administrative Complaint are those upon which this proceeding is predicated. *Trevisani v. Dep't of Health*, 908 So. 2d 1108, 1109 (Fla. 1st DCA 2005); *Cottrill v. Dep't of Ins.*, 685 So. 2d 1371, 1372 (Fla. 1st DCA 1996). Due process prohibits DCF from taking disciplinary action against a licensee based on matters not specifically alleged in the charging instruments, unless those matters have been tried by consent. *See Shore Vill. Prop. Owner's Ass'n v. Dep't of Envtl. Prot.*, 824 So. 2d 208, 210 (Fla. 4th DCA 2002); *Delk v. Dep't of Prof'l Reg.*, 595 So. 2d 966, 967 (Fla. 5th DCA 1992).

61. Count 1 of the Administrative Complaint seeks to discipline Ms. Pope on charges that she violated section 2.3 (A), (B), and (F) of the Handbook, which state, in relevant part:

A. Operators shall adopt a discipline policy consistent with Section 402.305(12), F.S., including standards that prohibit children from being subjected to discipline which is severe, humiliating, frightening, or associated with food, rest, or toileting. Spanking or any other form of physical punishment is prohibited.

B. All home operators, employees, substitutes, and volunteers must comply with the home's written disciplinary and expulsion policies.

\* \* \*

F. The following discipline techniques shall be prohibited in the home:

1. The use of corporal punishment, including but not limited to:



- Hitting, spanking, shaking, slapping, twisting, pulling, squeezing, or biting;
- Demanding excessive physical exercise, excessive rest, or strenuous or bizarre postures;
- Compelling a child to eat or have in his/her mouth soap, food, spices, or foreign substances;
- Exposing a child to extreme temperatures;
- Rough or harsh handling of children, including but not limited to: lifting or jerking by one or both arms; pushing; forcing or restricting movement; lifting or moving by grasping clothing; covering a child's head.

\* \* \*

#### 7. Any abuse or maltreatment of a child...

62. If proven, this allegation in Count 1 would constitute a Class I violation of the child care licensing standards set forth in rule 65C-20.012(1)(e).

63. The Administrative Complaint alleges that Ms. Pope violated the quoted Handbook provisions by using a form of discipline in the home that “included the use of spanking or other form of physical punishment” in relation to the injuries suffered by A.S. on or about May 29, 2019. For the reasons stated in the Findings of Fact above, DCF failed to carry its burden of proving that Ms. Pope used physical punishment on A.S., or that the child’s injuries were caused by Ms. Pope.

64. Count 2 of the Administrative Complaint alleged that Ms. Pope violated section 6 (A) of the Handbook, which states:

A. 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 at all times. Child care personnel must directly supervise children, both indoors and outdoors, by sight and sound. Children must never be left without child care personnel supervision inside or outside the home, in a vehicle, or at a field trip location by themselves.

65. If proven, this allegation in Count 2 would constitute a Class I violation of the child care licensing standards set forth in rule 65C-20.012(1)(e).

66. The Administrative Complaint alleges that Ms. Pope violated the quoted Handbook provision by failing to adequately supervise the children. Specifically, “On June 14, 2019,<sup>[1]</sup> a young boy A.S. somehow received bruises while in the provider’s care to the head and neck area. It has been determined that harm was caused at the hands of the provider, F.P. she is no longer caring for the child [sic].” For the reasons stated in the Findings of Fact above, DCF failed to carry its burden of proving either that Ms. Pope inflicted the injuries on A.S., or that the child’s injuries occurred at other hands while he was in the care of Ms. Pope.

67. Count 3 of the Administrative Complaint alleged that Ms. Pope violated section 9.2 (A) of the Handbook, which states:

A. Acts or omissions that meet the definition of child abuse or neglect provided in Chapter 39.201, F.S. or Chapter 827, F.S., constitute a violation of the standards in Sections 402.301-.319, F.S. Failure to perform the duties of a mandatory reporter pursuant to Section 39.201, F.S., constitutes a violation of the standards in Sections 402.301-.319, F.S.

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<sup>1</sup> Counts 2 and 3 of the Administrative Complaint allege that Ms. Pope’s acts or omissions regarding A.S. occurred on June 14, 2019. The record established that the confrontation between Ms. Pope and Mr. Spell about A.S.’s injuries occurred on May 29, 2019.

68. If proven, this allegation would constitute a Class I violation of the child care licensing standards set forth in rule 65C-20.012(1)(e).

69. The facts alleged to support the allegations of Count 3 are as follows:

The operator or substitute, while caring for children, committed an act or omission that meets the definition of child abuse or neglect provided. On June 14, 2019 a child received bruises to the head, neck, face, back, and shoulders. It has been determined that harm was caused at the hands of the provider.

70. For the reasons set forth in the Findings of Fact above, DCF failed to carry its burden of proving that Ms. Pope committed any acts or omissions that constitute child abuse under the statutory definitions.

71. It could be found that Ms. Pope failed to perform the duties of a mandatory reporter by failing to report or even notice the bruises on A.S. before Mr. Spell pointed them out to her. However, the Administrative Complaint did not include any factual allegation regarding Ms. Pope's failure to report. Mere reference to a statutory or rule provision is insufficient to provide the licensee with notice of the facts or conduct alleged to warrant disciplinary action. "Predicating disciplinary action against a licensee on conduct never alleged in an administrative complaint or some comparable pleading violates the Administrative Procedure Act." *Cottrill*, 685 So. 2d at 1372. Strictly construing the Administrative Complaint against DCF, it is concluded that DCF failed to establish that Ms. Pope committed the violations alleged in Count 3.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby RECOMMENDS that the Department of Children and Families enter a final order dismissing the Administrative Complaint against Florine Pope, d/b/a Pope Family Day Care Home.

DONE AND ENTERED this 1st day of April, 2021, in Tallahassee, Leon  
County, Florida.



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LAWRENCE P. STEVENSON  
Administrative Law Judge  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
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COPIES FURNISHED:

Jane Almy-Loewinger, Esquire  
Department of Children and Families  
Suite 447  
210 North Palmetto Avenue  
Daytona Beach, Florida 32114

Terrill L. Hill, Esquire  
Terrill L. Hill, P.A.  
Suite E  
702 North 19th Street  
Palatka, Florida 32177

Javier A. Enriquez, General Counsel  
Department of Children and Families  
Building 2, Room 204F  
1317 Winewood Boulevard  
Tallahassee, Florida 32399-0700

Lacey Kantor, Agency Clerk  
Department of Children and Families  
Building 2, Room 204Z  
1317 Winewood Boulevard  
Tallahassee, Florida 32399-0700

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.