

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,783

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Appeal of )

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INTRODUCTION

The petitioners appeal a determination by the Department of Social and Rehabilitation Services to revoke their foster care license based on alleged violations of regulations governing the family foster care program.

FINDINGS OF FACT

1. In 1990, the petitioners, a husband and wife, were trained and licensed as foster care parents and received a provisional license in March of 1991 for short-term emergency care of children. On August 2, 1991, the license was renewed for a one year period and two foster children were placed with the petitioners. On June 11, 1992, the license was renewed again for one year.
2. As part of their initial and ongoing training, the petitioners were provided with copies of the licensing regulations for family foster care parents and attended workshops which stressed their responsibilities towards children in their care. Among these obligations were the need to keep information about foster children confidential, the right of foster children to privacy and the need to exercise good judgment and model acceptable behavior for children in care.
3. An evaluation of the petitioners as foster parents dated September 27, 1993, was performed by the SRS district director and resource coordinator. At that time it was recommended that the petitioners advance to the next level of foster care parenting which would allow them to care for up to three children at a time, (instead of two). It was noted in that evaluation that the petitioners had been giving short term care to some of the most difficult to place teenagers although they preferred to have younger children. The were assessed as having positive qualities including demonstrating "empathy for children, willingness to work with primary families" as well as sharing in transportation for the children and maintaining a supportive network with other foster parents. They were found to need improvement in communicating with SRS about problems with the children and in taking steps to avoid manipulation by the children which created barriers between themselves and the casework team. Based on this evaluation the petitioners received an amended foster home license for up to three children which was effective through March 31, 1995.

4. In early 1994, SRS received a complaint from a foster child who had lived with the petitioners that petitioner, Mrs. O., had discussed with him the personal and physical problems of other foster children and had spoken of the children in a disparaging way both in and outside their presence. SRS also received a complaint from a certified nurse practitioner in pediatrics that she had observed Mrs. O. discussing the physical and emotional problems of one of the foster children she had brought to her office for medical care in a negative and derogatory fashion in the presence of the child.

5. These reports were investigated by the same SRS worker who had originally trained and approved the petitioners for a license. The investigator who is a well-trained and experienced child placement professional spoke with the resource coordinator who performed the above evaluation, the nurse practitioner, the foster child who made the report, both the petitioners and five caseworkers involved with foster children who had been in the petitioners' care. She prepared a written report in which she found, based on her interviews, that the petitioner, Mrs. O., had discussed physical and emotional problems of foster children with other foster children, had advised the children to discuss resolving conflicts by "punching out people's faces or punching out their lights", had failed to alert SRS when children had special problems, complained to SRS about getting difficult teenagers in front of the children, had discussed information provided to her in confidence by the children with people outside of her household, had called the foster children derogatory names and made fun of them, and had put down SRS in front of the children in spite of repeated reminders about her obligations to avoid these behaviors. The investigator concluded that

Based on all the interviews and past experience with the [petitioners], I feel [Mrs. O.] is unable to understand and abide by foster care regulations. Considering this is not the first time [Mrs. O.] has had to be spoken to about confidentiality and her seeming inability to comprehend the regulations, as well as her denial and inability to take responsibility for her behavior, continuing to let her provide foster care is too great a liability.

She concluded that

The [petitioners] behavior demonstrates an inability to abide by licensing regulations and should not be permitted to continue doing foster care.

6. The recommendation of the licensing specialist was

for revocation of the license which was approved and implemented by her supervisor. On March 29, 1995, the petitioners were notified of the above findings in specific detail and were advised that the Department believed the facts constituted a violation of a number of regulations and that those violations resulted in a decision to revoke their foster care license. They were also apprised of their appeal rights, including an opportunity to present their case to the Commissioner and to invoke his discretion not to revoke the license and to appeal that decision to the Human Services Board. A copy of that letter is attached hereto and incorporated by reference herein as Exhibit No. One.

7. The petitioners asked for and received a review by the Commissioner's deputy. He met with the petitioners personally, reviewed the file including a copy of their 1993 evaluation, and accepted written evidence from them consisting of letters of support from other parents and children. In addition, the deputy personally or telephonically interviewed a number of social workers, mental health counselors, SRS employees, guidance counselors, and parents involved in the case. The Deputy Commissioner found that a number of violations of the regulations had taken place and supported the proposed

revocation of the foster care license. The petitioners were notified of his findings on May 16, 1994, in a letter which is attached hereto as Exhibit No. Two and incorporated by reference herein.

8. Subsequent to this action, SRS received another report from a child who had been in the petitioners' care alleging that the petitioner, Mrs. O., had also talked with her about behavior of other foster children, had listened in on her phone calls to her mother, had discussed her sex life with Mr. O. in an inappropriate manner, and had warned the child not to report their conversations to SRS. After investigation, the specialist also concluded that this report was reliable and prepared a written report involving that investigation. On June 30, 1994, SRS sent a letter to the petitioners adding these violations to the regulations as additional reasons for revocation of their license. This letter is attached hereto and incorporated by reference herein as Exhibit No. Three.

9. At the hearing, SRS, citing its policy of not subjecting children in its custody to unnecessary adversarial judicial proceedings and Board precedent in this area, did not put forth the testimony of the two children who had made the complaint against the petitioners. Instead, the Department offered the testimony of the licensing specialist who personally interviewed both of the children as well as her written summaries of her conversations with them made a few days after the interviews from notes taken (but since destroyed) during the interviews.

10. The interview with the first child, T.P., who was then fourteen years old, was summarized in the written report made on March 17, 1994, two days after the interview, as follows:

T.P., foster child who lived with [petitioners] from early December 1993 to the beginning January 1994. T. said [Mrs. O.] has a 'big mouth', and 'she starts rumors.' '[Mrs. O.] told me about every kid she ever had in her home.' T. went on to give names of kids, 'C.W. was into drugs, there was a Ch. who was really weird, and she told me about Ta. taking a crap in the top drawer of bureau. On the other hand, [Mr. O.] was pretty cool. He never bothered anybody.'

T. talked about an incident where he had been in a physical fight with his father. He felt he needed to talk to someone and sat down and told [Mrs. O.]. Later [Mrs.O] called her sister and told her the whole story ([Mrs. O's sister told T. she heard from [Mrs. O.] what had happened). While he was going to [Name] High School, two of [Mrs. O's] grandsons (they also attend the same school) came up to T. and said they heard about the fight between T. and his father.

[Mrs. O.] always says she is joking around when she calls the kids names. She called T. an 'idiot' and made fun of her hair. She also told T. about Ta. having the Norplant birth-control placed in her arm and said for T. to stay away from Ta. because Ta. is the type to call rape. [Mrs. O.] told T. that Ta. was a compulsive liar and that Ta.'s mother did not want her. [Mrs. O.] put down Ta.'s friends in front of her. 'They are a bad influence, little sleaze.'

T. told [Mrs. O.] something in confidence, something he did not want his mother to know. When his mother called, [Mrs. O.] told her. She was always talking to my mother and telling her everything.

[Mrs. O.] would also put the caseworkers down in front of him. She put down C.R. (could not remember specifics). [Mrs. O.] would also pump him for information when he had a visit with caseworker, 'I know they talk about me, what did they say?'

[Mrs. O.] told T. she was 'stressed out' by him, and her blood pressure was high because of him. She

also told him that he asked too many questions.

[Mrs. O.] would get on his case about eating too much. She would even yell at him for eating bread and butter. He was hungry all the time. [Mrs. O.] served three meals a day and one snack but they were sparse.

11. The interview with the second child, D.S., who was then sixteen years old, was conducted following her report to her caseworker that she had a phone conversation with

Mrs. O. in either May or June of 1994, which was summarized in a written report dated three days after the interview as follows:

D. said she only called [Mrs. O.] to see how she was doing. Immediately, [Mrs. O.] seemed suspicious and asked why D. was calling and had she heard anything about her license. D. said no but then asked [Mrs. O.] what she meant. [Mrs. O.] then said you must have heard something, they have taken my license. [Mrs. O.] then went on to explain that a kid (D. couldn't remember the name of the kid) told SRS a bunch of shit. [Mrs. O.] told D. that some kid told SRS that she had beat him up. [Mrs. O.] also said that SRS has accused her of talking about the kids to other kids and listening to conversations on the phone. [Mrs. O.] asked D. if she had ever talked to her about the kids who had been in her home or if she had ever listened to D.'s phone conversations with her mother. D. said yes, you did it all the time. D. then went on to explain that [Mrs. O.] talked a lot about the kids who had been in the home before her.

She told D. why they were in foster care and what they did when they were living at the [petitioners]. She said, 'Mrs. O. talked about the kids to anyone who would listen. Mrs. O. also listened in to phone calls when I talked to my mother.' D. also said there were occasions that Mrs. O. talked to her about [Mrs. and Mr. O.'s] sex life.

D. said, 'I don't think Mrs. O. had any idea what it means to keep something confidential.' At the end of the conversation between D. and [Mrs. O.], Mrs. O. said to her if SRS asks you about this, don't say anything. D. feels [Mrs. O.] was trying to get her to agree not to tell anyone about this conversation.

12. In addition to the above two summaries of the children's statements, SRS offered a letter from the certified nurse practitioner who made the complaint to SRS in January of 1994, and who was subsequently interviewed by them. That letter was accepted into evidence under Fair Hearing Rule 12 and provides as follows:

Dear Director [of SRS]:

I am writing in regard to my patient, Ta.L., and her foster mother, [Mrs. O.]. I have followed Ta. for years and feel that Mrs. O. is a very inappropriate foster parent for this child. Ta. has a long history of sexual abuse and physical abuse and is now encopretic and possible sexually precocious as a result of her past history. I feel that [Mrs. O.] deals with her in a demeaning, sexually abrasive way. She uses inappropriate language and inappropriate messages are given to Ta. about sex and boys. Mrs. O. has, on many occasions, talked negatively to Ta, insulting her, giving her serious misinformation and I think that she fabricates much of what she reports to me. I question whether this is an appropriate foster home and I hope that you look into this matter for future needy children. Please contact me if you have any questions. I would prefer that you do not speak with [Mrs. O.] about my complaint but that simply you re-evaluate whether this is an appropriate foster home for children.

13. The investigating licensing specialist testified at hearing that she accurately recorded the statements of the children above and that she believed they were credible statements. She based her belief on a number of factors. The first was that she trained the petitioners herself as foster parents and noted at that time that they seemed to have difficulty comprehending many of the regulations. For example, when she talked about eating disorders, the petitioners told her it meant 'don't overfeed the kids.'" The second reason was that both children told her information which they had no reason to know unless Mrs. O. had told them, although she allowed that it was possibly they got some of the information from their own observations or other children. She did not interview Ta. herself because she was in a fragile new placement. She also had no information from the children's caseworkers that they were unreliable reporters. Finally, the letter from the nurse practitioner commenting on some of the same behavior corroborated their statements in her view. The licensing specialist agreed that she had opposed the petitioners' licensing at the inception of their relationship because she had concerns about their sensitivity to and understanding of the regulations and questioned their motives for becoming foster parents based on her own observations of and conversations with the petitioners. The specialist's testimony is found to be both sincere and credible. The fact that she originally had misgivings about the petitioners as foster parents does not demonstrate a personal bias against them but rather shows a professional concern appropriate for and consistent with her duties.

14. The licensing supervisor presented testimony from which it is found that the child's right to confidentiality, respect and privacy is the heart of the foster parent and child relationship and breaches of this trust are humiliating for foster children and undermine their self-esteem. The supervisor's belief that such a breach occurred in this case has caused her to remove all children from the petitioners' home and to make no further placements there even if the license is retained. It is her belief from her review of the record that the petitioners are incapable, either through lack of comprehension or flagrant disregard, of carrying out their obligations under the regulations.

15. The resource coordinator testified that she gave the petitioners a positive evaluation in the fall of 1993 and found Mrs. O. to be an honest and forthright person. At that time, the only deficits she noted in their performance was a lack of communication and sharing information with the caseworker and a need to improve her skills with teenagers to avoid manipulation. She acknowledged that the petitioners were sent difficult teenagers and that they had no complaints about their performance before 1994. In January of 1994, however, Mrs. O. called her to discuss Ta.'s personal hygiene and the coordinator was surprised by the amount of graphic detail she went into regarding a vaginal infection the child might have. She referred the petitioner to the pediatric nurse practitioner. In late January of 1994, during a phone call, the petitioner admitted to her that she had told a boy who was in short-term placement that she did not get along with his caseworker. The coordinator advised her that it was not appropriate to make such a remark because it made it difficult for the children to believe that the foster care system could help them. During a phone conversation in late February or early March of 1994, Mrs. O. had also mentioned tangentially in a conversation with her about Ta. that she had shared information about Ta.'s condition with other children. She agrees that Ta. never complained about her care at the petitioners' home. This testimony is found to be both accurate and credible.

16. Some of the testimony of the petitioner, Mrs. O., can be credited. She and her husband, who has mild Alzheimer's disease, have jointly held the foster license since 1991. In that time they have cared for about eighty children on a short-term temporary basis. Most of those children have been difficult to manage with serious physical and emotional problems. She has agreed to take these difficult children although she believes she was promised children under the age of twelve. She has attended all training

requested of her by the Department.

She further credibly testified that T. lived with the petitioners from December 10, 1993 to January 4, 1994 and went to a middle school. Ch. lived with her from March 22, 1993 to April 2, 1993 and went to a different middle school. Ta. was not living at her home at any time when Ch. was there. C.W. lived at her home for one year from November of 1991 to November of 1992, and was not there at the same time as Ta., Ch., T.P., C.W. or D. In January of 1994, T., Ch. and C.W. all attended the same high school in special education programs.

17. The petitioner denies that she has ever revealed confidential information or spoke disparagingly to or about a child. She acknowledges receiving a call in 1992 with regard to a "baby" but has not had any other discussions about that subject. She specifically denies ridiculing Ta. about her shaved head or calling her "an idiot". She also denies that she ever told any child to handle conflict with violence.

She claims that T. is an "habitual liar", and the child of alcohol and drug abusers who battered him. She has known his father since childhood. It is his practice, according to her, to "knock down" foster parents by telling lies about their care, i.e. that he has been starved or frozen. She did not say how she knew that information. T. was removed suddenly from her home in January of 1993, because he didn't want to stay there but says SRS did not tell her why. She also claims that T. and Ta. "went together" before T. came to her home, a fact which she did not know and, if she had known would have kept her from taking him as a foster child.

The petitioner also claims that she only listened in on phone conversations on a few occasions when it was necessary to prevent a child being upset or threatened by a parent. She denies ever listening in on D.'s conversations or discussing her sex life with her. She characterized D. as a "spitfire" but a good girl who was easily led and mixed up and whom she sometimes talked with on the phone. She claims that her last phone conversation with D. consisted merely of her denying that she had lost her license when asked by D. based on information D. said she got from T.

None of the claims in this paragraph can be credited either because they were not supported by any other evidence or because they were contradicted by more credible evidence. The petitioner's demeanor which was excited, angry and combative also made it difficult to credit her statements, especially those which were contradicted in the record.

18. It is found that the investigating licenser most likely accurately recorded the statements of the two foster children, T. and D., who lived in the petitioners' home because she is an experienced inquisitor and investigator and because she has a professional obligation to accurately record information in the case file. The children's statements clearly and unequivocally describe Mrs. O. as a person who revealed confidences about the children's physical, emotional and personal life to other foster children and persons outside her household, who made inappropriate and disparaging remarks to and about the foster children in her care, who invaded their privacy by listening to phone conversations without reason, who encouraged children to settle conflicts with violence, and who made negative comments about caseworkers in front of foster children.

Those statements are found to be credible based on the corroborating statements of both the resource coordinator and the nurse practitioner to whom the petitioner made some similar statements and exhibited some similar behavior; on the fact that it was unlikely that the children could have known all of the information they did about foster children who lived there in prior years without some

information from the petitioner; that it was unlikely D. would have known anything about the investigation into the petitioners license without Mrs. O. having told her so; that the children's statements, which were given at separate times and places, were very consistent with each other and there was no evidence that they had any opportunity for collusion or that they even knew each other; and that the accusations are consistent with the petitioner's excitable and voluble demeanor and language used at the hearing and her demeanor as described both by the resource coordinator and the licensing specialist.

19. Based on the credible and consistent evidence offered by the children, the resource coordinator, the specialist investigator and the nurse practitioner, it is found that the petitioner, Mrs. O., did, in fact, say or act in such a manner as set out in the reports made by the investigator and alleged in Exhibits No. One, Two, and Three.

### ORDER

The Department's decision is affirmed.

### REASONS

The Commissioner of the Department of Social and Rehabilitation Services is charged by the legislature with the administration of the foster care program. See, generally, 33 V.S.A. § 304(b)(2), and 3501. The statutes specifically give the Commissioner the duty and authority to:

"issue regulations governing application for, and issuance, revocation, term and renewal of licenses and registration. In the regulations he may prescribe standards and condition to be met, records to be kept and reports to be filed.

33 V.S.A. § 306 (1)

Pursuant to this authority, the Department has adopted the following pertinent regulations:

200 Household members in a foster home must be responsible, emotionally stable, emotionally mature people of good character as exemplified by past performance and general reputation.

201 Applicants and licensees shall exhibit:

201.5 Sound judgment;

202 Each child-caring adult in the home shall exhibit the ability to be an appropriate model for children.

315 Foster parents shall treat all personal information regarding foster children and their families as confidential.

319 Foster parents shall respect a child's privacy.

325 Foster parents shall not engage in any practices that have the effect of degrading or humiliating a foster child, or that would undermine the foster child's sense of self-worth.

Although the standard adopted by the Board in foster care cases only requires that the Department show that it is reasonable to believe that the acts which constitute the violation occurred, the Department's proof exceeded that burden. A preponderance of the evidence in this case establishes that the petitioner revealed confidential information regarding the foster children to other children and to members outside of her household, that she listened to telephone conversations of the children which should have been private, that she encouraged violence as a method to resolving conflict, that she talked about her sex life in an inappropriate way, and that she used disparaging language when talking about the children both in their absence and in their presence, and that she spoke negatively of the children's caseworkers in their presence. Each of these facts singly is a direct violation of one or more of the above regulations. Each of the regulations cited above was violated at least once by the fact proven.

The petitioner does not agree that she committed these offenses. However, she does not dispute that the above acts are violations of the foster care regulations. Nor does she argue that she was unaware that this behavior was required of her. She simply denies these facts and challenges the sufficiency of SRS' evidence. It must be found, however, that SRS' evidence was more than sufficient to conclude that these acts occurred. SRS presented the direct and credible testimony of at least one witness to whom the petitioner admitted that she had violated confidentiality rules and had exercised poor judgment and role modeling by criticizing caseworkers in front of the children. SRS also presented an admissible written statement from a medical provider<sup>(1)</sup> regarding her direct observations of the petitioner and statements made to her by the patient-foster child which were consistent with statements made by other foster children. Finally, SRS submitted written summaries of statements made by the children which also had a high degree of reliability (both in the accuracy of the reported conversation and in the truth of the statements as born out by corroborating evidence in the record) which could only be obtained otherwise through the testimony of the foster children, an extremely undesirable burden for an already emotionally overburdened child to bear in a matter which holds no criminal penalties. The evidence offered by SRS was ample and reliable on the issue of the petitioner's behavior.

Once the Department has established the existence of the facts which form the basis for its action, the decision to revoke the license will be upheld if the Department had some reasonable basis for taking its action. See, e.g., Fair Hearings No. 12,790 and 13,092. The Department's decision will only be overturned if the petitioner can show that the revocation was an abuse of the Department's discretion. There is no question in this matter that the Department considered and reviewed all the pertinent facts and circumstances regarding the petitioners' situation, and that the Department's decision was reasonably supported and in accord with its duly promulgated regulations and policies (see *supra*). It should be noted that the Board has held in the past that breach of the confidentiality of personal information about a foster child is in itself such a serious matter that one such breach is sufficient "cause" under 33 V.S.A. § 306(b)(3) for the revocation of a foster care license. See Fair Hearing No. 12,413. As this matter contains that breach and many others as well, it must be concluded that the Department's decision was both procedurally and substantively reasonable and that, as a matter of law, the Board is bound to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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1. The Board has always accepted written medical opinions from medical providers based on the hardship (primarily expense) of obtaining the testimony of such witnesses and the inherent reliability of statements they make regarding the diagnosis and treatment of their patients as required by their own rules of ethics and responsibilities to their patients.