

BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

In the Matter of Licensure of
Tender Hearts Day Care Home
252 NE 59 Terr
Topeka, KS 66617

A Group Day Care Home Operated by
Theresa Lynn Starkey

Case No. 08-H-108

Group Day Care Home License No. 6530

EMERGENCY ORDER OF SUSPENSION

NOW on this 8th day of May, 2008, Roderick L. Bremby,
Secretary of the Kansas Department of Health and Environment [Secretary], reviews the file on
the day care home operated by Theresa Lynn Starkey [Licensee].

Being duly advised in the matter, the Secretary finds that:

1. The Kansas Department of Health and Environment [KDHE] issued to Licensee, pursuant to K.S.A. 65-504, a license to operate a group day care home, effective June 7, 2007.
2. On or about May 6, 2008 and April 28, 2008, a complaint survey was made of Licensee's group day care home. There were 13 children present on one day and 11 children were present during the next survey causing Licensee to exceed the number of children in care allowed for licensed/lawful capacity in violation of K.A.R. 28-4-114(h) and K.S.A. 65-504(a). There were seven (7) children under 18 months and six (6) children 18 months to school age on May 6, 2008. Twelve (12) of the children ranged in ages from nine (9) weeks to two (2) years of age. There were five (5) children under 18 months and six (6) children 18 months to school age for a total of 11 children on April 28, 2008. The maximum number of children allowed for a group day care home was exceeded in violation of K.A.R. 28-4-114(f)(1). Each child was not under the supervision of person 16 years of age or older who is responsible for the child's health.

safety and well-being as required by K.A.R. 28-4-132(a). A 22 month old child with a respiratory illness was napping in a basement bathroom with the door closed and an exhaust fan running. There were no adults on this level of the home and the child was only checked on one (1) time during the course of the two (2) hour survey. Each person caring for children was not qualified by sound judgment and an understanding of children in violation of K.A.R. 28-4-126(a)(1). Licensee allowed two (2) infants to be taken out to the garage area inadequately dressed when the temperature was 52° with gusty winds. One infant had no shoes or socks and neither child had on a coat or jacket to protect them from the elements. Licensee allowed a large dog that had recently killed a smaller dog also owned by the Licensee, on the main level of the home with three (3) small children. The Licensee did not keep this dog separate from the children in care. A crib or playpen with slats not more than 2 3/8 inches apart or equipped with bumpers was not used for each child under 18 months of age as required by K.A.R. 28-4-116(b)(2)(A). A nine (9) week old infant was sleeping in a swing with its head slumped forward, increasing the risk of suffocation. The child was a low birth rate baby that is still quite small and was not able to hold its head up for even a short period of time. A two (2) month old infant was sleeping in a bouncy seat and Licensee admitted that two (2) other infants were placed on a blanket on the bedroom floor next to a running fan. Licensee allowed an infant to sleep on the second floor of the home that was not approved for fire safety in violation of K.A.R. 28-4-115(d) and K.S.A. 65-508(b). Licensee's day care home was not maintained as to provide adequately for the health and safety of children in care as required by K.A.R. 28-4-115(b). There were dog feces on the living room floor where infants and young children who crawl are placed. Each stairway was not guarded to prevent a child's head or body from falling through if children under two-and-a-half are in care as required by K.A.R. 28-4-115(b)(10). The basement stairs were not guarded at the top or the bottom of the steps and there were children under 2 1/2 on both levels.

Proper diapering procedures were not followed in violation of K.A.R. 28-4-132(c)(4) and K.A.R. 28-4-132(c)(10) as a child was changed on the bathroom rug without a changing pad.

3. K.S.A. 65-524 authorizes the Secretary to suspend a license to operate a group day care home prior to a hearing when, in the opinion of the Secretary, said suspension is necessary to protect any child in the home from physical or mental abuse, abandonment, or any other substantial threat to health or safety.

4. Due to the facts contained in paragraph two above, the Secretary has determined that immediate suspension of Licensee's license is necessary to protect children in Licensee's care from physical abuse or a substantial threat to their health or safety.

6. Licensee is hereby required, pursuant to K.S.A. 65-506, to notify the parents and guardians of the children in care in writing that her license has been suspended.

WHEREUPON, the Secretary hereby suspends Licensee's license to operate a group day care home, effective immediately, thereby prohibiting Licensee from caring for children. This Emergency Order of Suspension remains in effect until the issuance of an order rescinding this order.

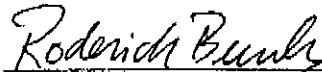
RIGHT TO A HEARING

Licensee has a right to request a hearing on the above issues and proposed order in accordance with the provisions of the Kansas Administrative Procedure Act. To obtain a hearing, a request for a hearing must be filed within fifteen [15] days of the date this notice is mailed and served, which date is indicated by the Certificate of Service below. Failure to file a timely request will result in a waiver of Licensee's right to a hearing, and this Emergency Order of Suspension will become a Final Order suspending Licensee's license to operate a group day care home.

If you want to request a hearing, a written request for a hearing must be filed with Tracy T. Diehl, Director, Office of Administrative Hearings, 1020 South Kansas Avenue, Topeka, Kansas 66612-1327, telephone number (785) 296-2433. **Please indicate a telephone number where you can be contacted during business hours if you request a hearing.**

This Emergency Order of Suspension is issued pursuant to K.S.A. 77-536 of the Kansas Administrative Procedure Act.

IT IS SO ORDERED.



Roderick L. Bremby, Secretary *100*
Kansas Department of Health and Environment

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KDHE Legal Office

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of May, 2008, a true and correct copy of the above and foregoing Emergency Order of Suspension was placed in the U. S. Mail, postage prepaid, addressed to:

Theresa Lynn Starkey
252 NE 59 Terr
Topeka, KS 66617




Staff Person

and on the 8 day of May, 2008, a facsimile copy of the above and foregoing Emergency Order of Suspension was hand-delivered to:

Theresa Lynn Starkey

at:

252 NE 59 Terr
Topeka, KS 66617


Shawnee County Health Department