

LEG. FINANCE - BILLS 1983 - 1984 1949

HB 588 cont.

1949

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE

BILL/RESOLUTION NO: HB 588

TITLE: "An Act relating to award of cost and attorney fees to persons..."

AGENCY AFFECTED: Department of Labor

Page 2

Under this bill the Department of Labor, Occupational Safety and Health would be responsible for reimbursing costs and attorney fees to persons who prevail against the State in administrative proceedings for contested Occupational Safety and Health inspections.

The following assumptions have been made in preparing this fiscal note:

1. The effective date is July 1, 1984
2. Forty inspections will be contested
3. Twenty percent of the cases will be at least partially reversed
4. Fifty percent of the reversed cases will be represented by an attorney
5. Average cost per case will be \$2,500
6. Fifty percent of the cost will be reimbursable under Alaska Rules of Civil Procedures, Rule 82 (Designation of reasonable cost)
7. The number of cases with legal representation will double in FY '86
8. Six percent inflation rate is used from FY '86 thru FY '89

LEG:A:39

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 588  
 Title: "award of cost and attorney fees to persons...."  
 Sponsor: Tischer  
 Requestor: Judiciary Comm.  
 Date of Request: February 28, 1984

FISCAL DETAIL

Agency Affected: Labor  
 Program Category Affected: Social Services  
 BRU, Program or Subprogram(s) Affected: Employment Security BRU  
Unemployment Insurance Component

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		24.0	50.9	56.0	61.6	67.7
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		24.0	50.9	56.0	61.6	67.7
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND		24.0	50.9	56.0	61.6	67.7
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis

Prepared By: John W. Shay, Jr. Phone: 465-2712  
 Division: Employment Security Division Date: 2-29-84  
 Approved by Commissioner: Jim Robison Date: 2-29-84  
 Agency: Labor

LEG:B:11  
 Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

BILL/RESOLUTION NO: HB 588

TITLE: "An Act relating to award of cost and attorney fees to persons...."

AGENCY AFFECTED: Department of Labor

Page 2

Under this bill the Department of Labor, Employment Security Division would be responsible for reimbursing costs and attorney fees to persons who prevail against the State in administrative proceedings for Unemployment Insurance benefit and tax cases.

The following assumptions have been made in preparing this fiscal note.

1. The effective date is July 1, 1984.
2. Four thousand projected cases in FY '85.
3. Thirty percent of the cases will be reversed.
4. Ten percent of the reversed cases will be represented by an attorney.
5. Average cost per case will be \$400.
6. Fifty percent of the cost will be reimbursable under Alaska Rules of Civil Procedure, Rules 82 (Designation of reasonable cost).
7. The number of cases with legal representation will double in FY '86.
8. For FY '87 thru FY '89, 10% increase annually in the reversed cases represented by an attorney.
9. Six percent inflation factor has been used for FY '86 thru FY '89

LEG:B:11

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

acc. cv

Revision Date

**REQUEST**

Bill/Resolution No: HB 588  
 Title: Award of costs and attorney fees.  
 Sponsor: Tischer  
 Requestor: House Judiciary  
 Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: Revenue  
 Program Category Affected: \_\_\_\_\_  
 BRU, Program of Subprogram(s) Affected: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<b>OPERATING</b>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	-	-	-	-	-
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	-	-	-	-	-

**POSITIONS:**

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

**SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:**

Fiscal impact of this legislation would be difficult to project as the number of hearings in question is unknown.

**ANALYSIS:** Attach a separate page for analysis.

Prepared By: Bruce M. Botelho  
 Division: Commissioner's Office

Phone: 465-2300  
 Date: 02/29/84

Approved by Commissioner: *[Signature]*  
 Agency: Revenue

Date: 2/29/84

**Distribution (by Agency preparing fiscal note):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

## Analysis for HB 588

HB 588 would require presiding officers in administrative proceedings to award respondents their "costs of defense, including attorney fees."

There are two fundamental deficiencies with this bill. First, and the most significant, is the infusion of additional issues for appeal in cases that might not otherwise be appealed. A review of Alaska Supreme Court decisions will disclose numerous cases appealed on two related issues: (1) who is the prevailing party, and (2) the reasonableness of costs and attorney fees. Because the almost universal practice in this country has been to preclude attorney fees at the administrative level, administrative hearing officers have not had to divert their attention to this issue. In this regard it should be noted that, like criminal cases, taxation and license disciplinary proceedings have been considered exercises of the sovereign's power for the public welfare for which no attorney fees should be awarded. Second, the bill is imbalanced in that it does not provide for compensation to the state when the state prevails in proceedings.

The motivation for litigation over costs and attorney fees might be reduced by inclusion of language limiting the amount of recovery. This would be especially helpful in cases before the Department of Revenue in which millions of dollars are at issue. Such a limitation might take the following form:

"A claim for costs and attorney fees may not exceed \$75 an hour for services actually performed by the attorney of the claimant and may not exceed \$5,000."

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 588  
 Title: An Act....award of costs and attorney fees....  
 Sponsor: Tischer  
 Requestor: Judiciary  
 Date of Request: 3/1/84

FISCAL DETAIL

Agency Affected: Education  
 Program Category Affected: Elementary & Secondary Education  
 BRU, Program or Subprogram(s) Affected: Management, Law & Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

This is not a zero fiscal note. Financial impact of the bill is indeterminate.

ANALYSIS: Attach a separate page for analysis

Prepared By: Steve Hole *Person Elger for* Phone: 465-2800  
 Division: Commissioner's Office Date: 3/1/84  
 Approved by Commissioner: Harold Reynolds, Jr. Date: 3/1/84  
 Agency: Education

Distribution (by Agency preparing fiscal note):

Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

12/1/83

POSITION PAPER

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

CSHB 588 (Judiciary)

Award of Costs and Attorney Fees,  
State Administrative Proceedings

While we have no problem with the concept of reimbursing reasonable costs to persons who challenge permit decisions and prove that the department erred, we believe encouraging the involvement of attorneys would complicate what is now a very simple process within our regulations and would result in an increase in hearings at great expense to the state with a disproportionate benefit to the public, given the fact that most of this department's challenged decisions have been upheld.

Our adjudicatory process was created for use by laypersons. It provides an informal forum whereby anyone may challenge a department decision and bring that challenge before the commissioner. In such cases, the Department of Law attorney assigned to defend the decision has kept a low profile with regard to strict legal procedure, keeping objections to a minimum and giving as much leeway to the layperson as possible.

Most of the adjudicatory hearings before this department have not involved attorneys. Those that have become a nightmare of motions to be decided, and extensions of time that delayed the decision many months beyond the limits set in our regulations. A formal atmosphere was created in what was intended to be a quasi-judicial setting.

Under AS 46.35.090(e), this department "need not conform to the Administrative Procedure Act" when a permit decision is adjudicated. However, when a proceeding becomes complicated with factors not anticipated when our regulations were drafted, we are forced to look elsewhere for guidance, i.e., the Administrative Procedure Act and the Alaska Rules of Court. Such complication was clearly not envisioned when the adjudicatory process was developed. If this bill becomes law, we would require a staff attorney/hearing officer or, at the very least, a contract attorney to advise the commissioner. It would also be necessary to rewrite our regulations to include more sophisticated procedures.

A memo dated July 8, 1982 from Art Peterson at Department of Law addressing award of costs and fees, states "It is difficult to relate [the concept of 'prevailing party'] to either the single-party or multi-party permit-application adjudications handled by your department."

For example, when someone challenges a permit issued for a solid waste disposal site, that challenge usually reflects the undesirability of having such a site near their home. That argument is a zoning issue beyond our jurisdiction. For that person to "prevail," we would have to withhold the permit and prevent the site from being established. What actually happens, however, when a decision is found lacking in some respect, is that the matter is remanded back to the regional office for further study or refinement. Permit conditions are sometimes amended. While that could be interpreted as a "victory" for the requestor, in the very strictest sense, it is not.

We certainly appreciate the intent of this legislation. Not many private citizens will devote the time and effort spent by Mrs. McCallon in her "successful" adjudication of the Auke Bay Breakwater permit, or by Mr. and Mrs. Allen in their "unsuccessful" adjudication of the Soldotna Landfill permit. They had no apparent difficulty with the hearing process and met most deadlines with ease.

At the other extreme we find the Cube Cove adjudication where five attorneys participated, and the Atwood adjudication with four attorneys. The Cube Cove decision was delayed for several months by complicated procedures, and the Atwood matter is still undecided nearly three years later. Costs and fees in those matters will probably amount to five figures.

While Cube Cove and Atwood would have involved attorneys with or without HB 588, that legislation will encourage even cases such as Auke Bay and Soldotna to escalate to the same unwieldy proportions.

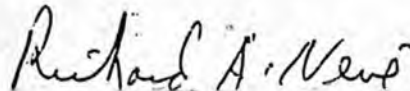
Compliance order and emergency order hearings, on the other hand, are more formal, and more appropriately lend themselves to the presence of attorneys. This is evident from the requirement for the appointment of a formal hearing officer. Of the two types of hearings, it is suggested that adjudicatory hearings be exempted from this legislation, while compliance order and emergency order hearings be covered.

The amendment that places a ceiling on the amount that might be awarded is an improvement over the original bill, but it will still be costly for the state to bear this expense. Assessing fiscal impact is close to impossible.

We do not believe the delays inherent with a more complicated approach would serve the best interests of the public. Neither is the public well served by the state addressing increased, convoluted hearings at increased cost to the taxpayer, with no provision for reimbursement to the state from unsuccessful requestors.

If the award of attorney fees were restricted to proceedings which fall strictly under the Administrative Procedure Act (exempting our adjudicatory hearings but not our compliance hearings), while reasonable costs (excluding attorney fees but including expert witness fees--probably of far greater benefit to the requestor) were allowed for all proceedings, we believe the intent of the legislation would be carried out without jeopardizing the simple hearing process we follow.

DATED: March 20, 1984.



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Richard A. Neve  
Commissioner

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 588

Opposed

February 17, 1984



HB 588, An Act providing for the award of costs and attorney fees to persons who prevail in certain state administrative proceedings; and providing for an effective date.

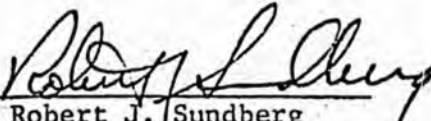
The Department ~~is opposed~~ to this piece of legislation. There are too many questionable areas as to when costs would have to be paid, such as the following examples:

*See 09.50.410:  
"If actions  
by a state agency"*



- 1) A number of motor vehicle hearings are held at the request of a citizen who is disputing another's right to a motor vehicle or title. The department acts as the hearing officer to determine the facts and decide the proper owner. This is classified as a departmental hearing so the question arises, is the department liable for the fees of the winner? *nonsense*
- 2) If the driver's license suspension is under the financial responsibility law, and the citizen complies with the law prior to the hearing, such as entering into a settlement agreement with the injured party and buying insurance, the hearing officer does not sustain the department's action (in actuality the action would be withdrawn), does this mean the respondent "prevails"?
- 3) If the driver's license revocation is as a result of a DWI arrest in which the citizen took the breath test and the results were above .10; and the citizen asks for an administrative review to obtain a limited license; and the hearing officer grants the limited license; does this mean the respondent "prevails"?

Another item of concern is that most hearing officers are department employees. Although they always attempt to be completely unbiased, the subconscious realization that an adverse decision will cost the State money may have an influence. Even if it didn't, and I'm sure it wouldn't, the respondent's attorney could so claim in challenging the decision.

  
Robert J. Sundberg  
Commissioner



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Alaska State Legislature  
HOUSE OF REPRESENTATIVES

REPRESENTATIVE  
CHARLIE BUSSELL  
CHAIRMAN

## Committee on Judiciary

MEMORANDUM

March 14, 1984

TO: Rep. Mae Tischer

FROM: Joe Brewer, Counsel

TOPIC: Dept. of Public Safety protests of HB 588

1. AS 28.15.166 (attached). They have a good point here. I had forgotten how we so amended Title 28 last year in HB 6, the drunk driving bill. There's going to be many occasions when an officer makes an arrest (under AS 28.15.165, or if not an arrest, gives a person notice of Department's intent to suspend licence) and has to give a temporary license to that person, which will expire in 7 days, and give notice the individual may have an administrative review of the revocation, or of the determination not to issue an original license.

AS 28.15.166(d) though, says

"...The determination of the department that is based on upon the enforcement officer's report becomes final."

I don't know if that means a determination to consider the non-showing-up defendant has waived his right to a hearing, or if it means the Department's determination to revoke a license becomes final, based on the report. I suspect the latter.

Even so, no matter how many temporary licenses we are forcing the police officers to give out, there remains the administrative hearing, which could go either way, but which in all probability will always go in favor of the Department. I don't think there'd be many winners who are respondents.

2. AS 28.20.050(d)....This section requires one who's had an accident to comply with departmental requirements to post security, following an accident, and the license will be suspended if the security is not posted within 10 days of notice. Of course, if the security is indeed posted, the suspension will not occur. I hardly think the department or any court will consider such compliance, of posting security--and thus not getting the license suspended--as "prevailing." No hearing has been involved--at that point. This departmental argument is superfluous.

3. AS 28.10.051--This has to do with revoking or suspending

MEMBERS:

REP. JOHN LISKA, VICE CHAIRMAN; REP. RAMONA BARNES, EMERITUS;  
REP. JOE HAYES; REP. HUGH MALONE; REP. DON CLOCKSIN; REP. RON WENDTE

the registration of a vehicle, and of course, all the bases for doing so could become defenses, so long as the "respondent" could disprove the department's claim, at a hearing (that it was erroneously or fraudently issued, that it's unsafe to move on the highway, that it's been scrapped, dismantled or destroyed beyond repair, that a tax or fee hasn't been paid that's required, a different vehicle's plate is in use, an offense has been committed involving registration, certificate, plate or permit and finally, a stolen vehicle).

It is this last item that might cause difficulty...if the department thinks that the person who actually owns the vehicle that has been stolen will "prevail" in getting it back. I don't see how that could possibly be construed that way, however.

AS 28.10.221. This refers to title, not registration. But just about the same arguments would apply.

4. AS 28.20.050(d). This is a spurious argument by the department. Department would like to cut out any evidence in favor of the respondent. If someone else provided false information and the department acted upon it, to the owner's detriment (of a vehicle), then perhaps the department should pay, for not better investigating in the first place.

effective for a period not to exceed 30 days. The commissioner shall adopt regulations governing the issuance of permits under this section.

(c) No person may operate a vehicle under an expired permit issued under this section (§ 7 ch 178 SLA 1978)

Sec. 28.10.041. Grounds for refusing registration. (a) The department may refuse to register a vehicle if

- (1) the application contains a false or fraudulent statement;
- (2) the applicant fails to furnish information required by the department;
- (3) the applicant is not entitled to the issuance of a certificate of title or registration under this chapter;
- (4) the vehicle is determined to be mechanically unsafe to be driven or moved on a highway, vehicular way or area, or other public property in this state;
- (5) the department has reasonable grounds to believe that the vehicle was stolen or fraudulently acquired or that the granting of registration would be a fraud against the rightful owner or other person having a valid lien upon the vehicle;
- (6) the registration of the vehicle has been suspended or revoked for any reason under the laws of this state;
- (7) the required fees, taxes, motor freight carrier fees or bus transportation fees have not been paid;
- (8) the vehicle or applicant fails to comply with this chapter or regulations authorized by this section.

(b) When the department refuses to register a vehicle, it shall immediately notify the applicant stating the reasons for the action and informing him of his right to a hearing under AS 28.05.131 — 28.05.141. (§ 7 ch 178 SLA 1978)

Am. Jur. reference. — 5 Am. Jur., Automobiles, § 111.

Sec. 28.10.051. Department may suspend or revoke registration. The department may suspend or revoke the registration of a vehicle, the certificate of registration or registration plates for a vehicle, or a special permit when

- (1) the department is satisfied that the registration or certificate, plate or permit was fraudulently or erroneously issued;
- (2) the department determines that a registered vehicle is mechanically unsafe to be driven or moved on a highway, vehicular way or area, or other public property in this state and the vehicle has been seized or impounded under AS 28.05.091;
- (3) a registered vehicle has been scrapped, dismantled or destroyed beyond repair;
- (4) the department determines that a required fee or tax has not been paid and the fee or tax is not paid upon reasonable notice and demand;

AS 28.10.041

Title 28  
Motor Vehicles

Title 28  
Motor Vehicles  
and Trailers

(5) a record upon a vehicle  
(6) the committed the certificate  
(7) the unlawfully  
(8) the d this state.

Sec. 28.10.061. Identification to be registered or is not on apply to the and for a sources to if the number original identification to show the inspected by ownership vehicle and assigned. The assigned identification

Sec. 28.10.062. (a) The department received an electronic combination and the vehicle a record of may make a record in regulation

- (b) Record (1) by a (2) by the a record of this chapter (3) by the (4) as other (c) The document used in law is separate be disclosed

- (5) a registration plate, permit, or certificate is knowingly displayed upon a vehicle other than the vehicle for which issued;
- (6) the department determines that the owner of a vehicle has committed an offense under this chapter involving the registration or the certificate, plate, or permit to be suspended or revoked;
- (7) the vehicle has been reported to the department as stolen or unlawfully converted; or
- (8) the department is otherwise required to do so under the laws of this state. (§ 7 ch 178 SLA 1978)

**Sec. 28.10.061. Registration of vehicles with altered or missing identification number.** When the vehicle identification number required to be registered under this chapter has been altered, removed or defaced, or is not on the vehicle, the owner shall, immediately upon discovery, apply to the department for replacement of the identification number and for a new registration. The department shall search all available sources to determine the identification number originally assigned and, if the number is determined, shall replace it. If efforts to determine the original identification number fail, the owner shall furnish information to show that he is entitled to ownership of the vehicle and have it inspected by the department. The department, when satisfied as to the ownership of the vehicle, shall assign an identification number to the vehicle and have the number placed upon the vehicle to which it is assigned. The vehicle shall then be registered under the replaced or assigned identification number. (§ 7 ch 178 SLA 1978)

**Sec. 28.10.071. Registration records and statistics; stolen vehicles.**

- (a) The department shall review each application for registration received and, when satisfied that it is correct, register the vehicle and keep a record of the registration in suitable books, index cards or electronic or photographic recording and storage media, or in any combination of them. The record is referred to as the "vehicle register" and the vehicles as "registered vehicles." The department may compile a record of the number and types of vehicles registered in this state and may make statistical data available to the public for a fee as prescribed in regulations adopted by the commissioner.
- (b) Records under this section shall be maintained
  - (1) by a distinctive registration number assigned to the vehicle;
  - (2) by the vehicle identification number, including but not limited to a record of identification numbers replaced or assigned under § 61 of this chapter;
  - (3) by the name and residence and mailing address of the owner; and
  - (4) as otherwise required by the department.
- (c) The department shall keep a record of the registrations of vehicles used in law enforcement work when secrecy is necessary. This record is separate from the vehicle register required by this section and may be made available to any person upon the request of the chief of police of a

Municipal Government Title 29

Title 27  
Mining

Title 26  
Motor Vehicles

vehicle described in the certificate of title and that the vehicle has not been reported stolen. (§ 7 ch 178 SLA 1978)

Purpose of former chapter. — The primary concern of the legislature in enacting former Chapter 10 was to facilitate the suppression of the traffic in stolen cars by requiring certificates of ownership. *Blanchard v. City Nat'l Bank*, 14 Alas. 644, 197 F. Supp. 733 (D. Alas. 1959). As to the use of "dealer" in former § 28.10.269, see *New & Used Auto Sales, Inc. v. Dewey*, 14 Alas. 647.

**Sec. 28.10.211. Application for title.** (a) The owner of a vehicle required to be titled under this chapter shall apply for title by properly completing and surrendering the forms prescribed by the commissioner and by complying with all applicable laws and regulations, after which the department shall issue a certificate of title.

(b) An application for title or transfer of title shall contain

(1) the signature in ink of the owner, or if there is more than one owner, the signature in ink of at least one of the owners and the name of each owner stated in the conjunctive or in the disjunctive; and

(2) any other information reasonably required by the department.

(c) When an application for title refers to a new vehicle, the application shall be accompanied by a "manufacturer's statement of origin" and other information reasonably required by the department.

(d) An applicant for title to a vehicle transferred by court action on a lien or encumbrance shall surrender to the department a certified copy of the court order involuntarily transferring the vehicle.

(e) If a vehicle to be titled is a specially constructed or reconstructed vehicle, the fact shall be noted on the application for title. The department may require evidence of prior registration of, or issuance of title for, the vehicle and may require the applicant to furnish additional information as it considers necessary to establish ownership, including bills of sale, invoices for vehicle equipment, or a surety bond. (§ 7 ch 178 SLA 1978)

Am. Jur., ALR and C.J.S. references. — 5A Am. Jur., Automobiles and Highway Traffic, §§ 161 to 168.

Certificate of title as prerequisite of recovery for injury of motor vehicle, 7 ALR2d 1349.

Motor vehicle's certificate of title or similar document as, in hands of one other

than legal owner, indicia of ownership justifying reliance by subsequent purchaser or mortgagee without actual notice or other interest, 18 ALR2d 813. 60 C.J.S., Motor Vehicles, § 42.

**Sec. 28.10.221. Refusal, suspension, and revocation of title.** (a) The department may refuse to issue a certificate of title and may suspend or revoke a previously issued certificate of title when

(1) the certificate of title was fraudulently procured or erroneously issued or required information or fees have not been provided;

(2) the vehicle has been scrapped, dismantled or destroyed beyond repair;

(3) the vehicle or title is unlawful or erroneous;  
(4) authorized person has not been returned in accordance with lawfully enacted 1978)

**Sec. 28.** issued by  
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(b) The warranty for the as may contain naming o  
(c) The the primary indicating

**Sec. 2:** department named in owner.  
(b) A execution lawful le

**Sec. 2** certificate illegible, of the department information prescribed and it shall be none,

(3) the vehicle has been reported to the department as stolen or unlawfully converted, until the department learns of the recovery of the vehicle or that the report of its theft or conversion was false or erroneous; or

(4) authorized by any other provision of law.

(b) Suspension or revocation of a certificate of title under (a) of this section does not affect the rights of a lienholder named on the certificate.

(c) A certificate of title which is suspended or revoked shall be returned immediately to the department by the owner or other person lawfully entitled to possession of the certificate of title. (§ 7 ch 178 SLA 1973)

Sec. 28.10.231. Certificate of title contents. (a) A certificate of title issued by the department shall contain

- (1) the date issued;
- (2) the name and residence and mailing address of the owner;
- (3) the name and address of the primary lienholder, if any;
- (4) a description of the vehicle including its make, year of manufacture, identification number; and
- (5) other information the department may reasonably require.

(b) The certificate of title shall contain a space for the assignment and warranty of title by the owner or dealer selling the vehicle and a space for the assignment or release of the security interest of a lienholder, and may contain forms for application for title by a transferee, and for the naming of a primary lienholder.

(c) The department may not indicate on a certificate of title more than the primary lienholder and the primary registered owner when indicating lienholders and registered owners. (§ 7 ch 178 SLA 1978)

Sec. 28.10.241. Delivery and effect of certificate of title. (a) The department shall deliver the certificate of title to the primary lienholder named in the certificate. Otherwise, delivery shall be to the registered owner.

(b) A certificate of title for a vehicle is not subject to attachment, execution or other judicial process, but this section does not prevent a lawful levy upon the vehicle. (§ 7 ch 178 SLA 1978)

Sec. 23.10.251. Lost, stolen or mutilated certificate of title. (a) If a certificate of title is lost, stolen, mutilated, destroyed or becomes illegible, the first lienholder or, if none, the owner or legal representative of the owner named in the title as shown by the records of the department shall apply for and obtain a duplicate title upon furnishing information satisfactory to the department and payment of the prescribed fee. The duplicate title shall indicate that it is a duplicate title and shall be mailed or delivered to the first lienholder named in it.

Municipal Government  
Title 29

that the person was driving while intoxicated a motor vehicle for which a driver's license is required was based, the department shall revoke the person's license or nonresident privilege to drive a motor vehicle in the state, or refuse to issue an original license effective upon expiration of the temporary driver's license issued under (a) of this section.

(d) The period of revocation of a driver's license by the department under this section shall be for the appropriate minimum period for court revocations under AS 28.15.181(c). (§ 3 ch 77 SLA 1983)

**Sec. 28.15.166. Administrative review of revocation.** (a) A person who has received a notice under AS 28.15.165(a) may make a written request for administrative review of the department's action under AS 28.15.165(c). If the person's driver's license has not been previously surrendered to the department, it shall be surrendered to the department at the time the request for review is made.

(b) A request for review shall be made within seven days after receipt of the notice under AS 28.15.165 or the right to review is waived and the action of the department under AS 28.15.165(c) is final. If a written request for a review is made after expiration of the seven-day period, and if it is accompanied by the applicant's verified statement explaining the failure to make a timely request for a review, the department shall receive and consider the request. If the department finds that the person was unable to make a timely request because of lack of actual notice of the revocation or because of factors of physical incapacity such as hospitalization or incarceration, the department shall waive the period of limitation, reopen the matter, and grant the review request.

(c) Upon receipt of a request for review, if it appears that the person holds a valid driver's license and that the driver's license has been surrendered, the department shall issue a temporary driver's permit that is valid until the scheduled date for the review. A person who has requested a review under this section may request, and the department may grant for good cause, a delay in the date of the hearing. If necessary, the department may issue additional temporary permits to stay the effective date of its action under AS 28.15.165(c) until the final order after the review is issued.

(d) A person who has requested a hearing under this section and who fails to appear at the hearing, for reasons other than lack of actual notice of the hearing or physical incapacity such as hospitalization or incarceration, waives the right to a hearing. The determination of the department that is based upon the enforcement officer's report becomes final.

(e) Notwithstanding AS 28.05.141(b), the hearing under this section shall be held at the office of the department nearest to the residence of the person requesting the hearing unless

(1) a district court judge or a magistrate has been designated as a hearing officer in the matter by the commissioner; or

(2) the department and the person agree that the hearing is to be held elsewhere.

(f) A review under this section shall be held before a hearing officer designated by the commissioner. Upon the consent of the administrative director of the state court system, the commissioner may designate a district court judge or a magistrate to serve as the hearing officer. The hearing officer shall have authority to

- (1) administer oaths and affirmations;
- (2) examine witnesses and take testimony;
- (3) receive relevant evidence;
- (4) issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;
- (5) regulate the course and conduct of the hearing;
- (6) make a final ruling on the issue.

(g) The hearing under this section shall be limited to the issues of whether the arresting officer had reasonable grounds to believe that the person was driving a motor vehicle while intoxicated and whether

(1) the person refused to submit to a chemical test under AS 28.35.031(a) after being advised that refusal would result in the suspension, revocation, or denial of the person's license or nonresident privilege to drive and that the refusal is a misdemeanor; or

(2) the chemical test authorized under AS 28.35.031(a) and administered to the person produced a result described in AS 28.35.030(a)(2).

(h) The determination of the hearing officer may be based upon the sworn report of a law enforcement officer. The law enforcement officer need not be present at the hearing unless either the person requesting the hearing or the hearing officer requests in writing before the hearing that the officer be present. If in the course of the hearing it becomes apparent that the testimony of the law enforcement officer is necessary to enable the hearing officer to resolve disputed issues of fact, the hearing may be continued to allow the attendance of the law enforcement officer.

(i) Testimony given by the person at the hearing is not admissible against the person in a criminal trial unless the person's testimony at the trial is inconsistent with that given at the hearing.

(j) If the issues set out in (g) of this section are determined in the affirmative by a preponderance of the evidence, the hearing officer shall sustain the action of the department. If one or more of the issues is determined in the negative, the department's action shall be rescinded.

(k) If the action of the department in revoking a nonresident's privilege to drive a motor vehicle is not administratively contested by the nonresident driver or if the departmental action is sustained by the hearing officer, the department shall give written notice of action taken to the motor vehicle administrator of the state of the person's residence and to any state in which that person has a driver's license.

(l) A hearing officer revoking a driver's license because a chemical test administered to the person produced a result described in AS 28.35.030(a)(2) may grant limited license privileges if the person has not been previously convicted within the preceding 10 years of an offense (A) described in AS 28.15.181(a)(5) or (8); or (B) under a law or ordinance in another jurisdiction with elements substantially similar to an offense described in AS 28.15.181(a)(5) or (8). The privileges may be granted for the final 60 days during which the license is revoked if the hearing officer determines that the person's ability to earn a livelihood would be severely impaired and a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public. A hearing officer may not grant limited license privileges when revoking a driver's license because the person refused to submit to a chemical test.

(m) Notwithstanding AS 28.05.141(d), within 30 days of the issuance of the final determination of the department, a person aggrieved by the determination may file an appeal in superior court for judicial review of the hearing officer's determination. The judicial review shall be on the record, without taking additional testimony. The court may reverse the department's determination if the court finds that the department misinterpreted the law, acted in an arbitrary and capricious manner, or made a determination unsupported by the evidence in the record.

(n) The filing of an appeal under (m) of this section does not automatically stay the department's revocation order. The court may grant a stay of the order only upon a motion and hearing, and upon a finding that there is a reasonable probability that the petitioner will prevail on the merits and that the petitioner will suffer irreparable harm if the order is not stayed. (§ 3 ch 77 SLA 1983)

**Sec. 28.15.181. Court suspensions, revocations, and limitations.** (a) Conviction of any of the following offenses is grounds for the immediate revocation of a driver's license:

- (1) manslaughter or negligent homicide resulting from driving a motor vehicle;
- (2) a felony in the commission of which a motor vehicle is used;
- (3) failure to stop and give aid as required by law when a motor vehicle accident results in the death or personal injury of another;
- (4) perjury or making a false affidavit or statement under oath to the department under a law relating to motor vehicles;
- (5) driving a motor vehicle while intoxicated;
- (6) reckless driving;
- (7) using a motor vehicle in unlawful flight to avoid arrest by a peace officer;
- (8) refusal to submit to a chemical test under AS 28.35.032;
- (9) driving while license canceled, suspended, revoked or in violation of a limitation.

Title 36

Public Safety - Motor Vehicle

Title 36

Title 37

(c) The department shall prescribe and provide suitable forms requisite or considered necessary to carry out this chapter. (§ 4 ch 163 SLA 1959)

Cited in Paulson v. National Indem. Co.,  
Sup. Ct. Op. No. 896 (File No. 1462), 498  
P.2d 731 (1972).

Sec. 28.20.030. Court review.  
Repealed by § 4 ch 140 SLA 1977.

Editor's note. — The repealed section  
derived from § 5, ch. 163, SLA 1959.

Sec. 28.20.040. Department to furnish operating record.  
Repealed by § 20 ch 241 SLA 1976.

Editor's note. — The repealed section  
derived from § 6, ch. 163, SLA 1959.

Sec. 28.20.050. Application of chapter. (a) The provisions of this chapter requiring deposit of security and suspension for failure to deposit security apply to the driver and owner of a vehicle subject to registration under the laws of this state which is involved in any manner in an accident in this state resulting in bodily injury to or death of a person or damage to the property of any one person exceeding \$500.

(b) Not less than 20 days after receipt of a report of such accident, the department shall determine the amount of security which it considers sufficient to satisfy any judgments for damages resulting from the accident which may be recovered against each driver or owner. The determination shall not be made with respect to a driver or owner who is exempt from the requirements as to security and suspension.

(c) The department shall determine the amount of security deposit required upon the basis of the reports or other information submitted. If a person involved in an accident as described in this chapter fails to make a report or submit information indicating the extent of his injuries or the damage to his property within 30 days after the accident, and the department does not have sufficient information on which to base an evaluation of injuries or damage, then the department after reasonable notice to the person, if it is possible to give notice, otherwise without notice, shall not require a deposit of security for the benefit or protection of the person.

(d) Within 30 days after receipt of report of an accident and upon determining the amount of security to be required of any person involved in the accident or to be required of the owner of any vehicle involved in the accident, the department shall give to every person written notice of the amount of security required to be deposited by him and stating that an order of suspension will be made upon the expiration

Oil and Gas

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of 10 days after the notice is sent unless within that time amount deposited as required. No license may be suspended unless the license is afforded a hearing by the department at which it is determined that there is a reasonable possibility of a judgment being rendered holding him liable. (§ 7 ch 163 SLA 1959; am § 1 ch 127 SLA 1972; am § 11 ch 144 SLA 1977)

Effect of amendment. — The 1977 amendment substituted "\$500" for "\$200" at the end of subsection (a).

The purpose of security is to satisfy any judgment arising out of an accident. National Indem. Co. v. Hart, 4 Alas. L.J. No. 4, p. 54 (April, 1966).

One method of proof of financial responsibility is by way of a certificate of liability insurance (AS 28.20.410) certifying that there is in effect a motor vehicle

liability policy for the benefit of the person required to furnish proof of financial responsibility. Hartsfield v. Carolina Fire Ins. Co., Sup. Ct. Op. No. 331 (File No. 517, 451 P.2d 576 (1969)).

Quoted in Hart v. National Indem. Co. Sup. Ct. Op. No. 357 (File No. 722), 422 P.2d 1015 (1967).

Cited in Paulson v. National Indem. Co. Sup. Ct. No. 506 (File No. 1462), 498 P.2d 731 (1972).

Sec. 28.20.060. Exceptions to requirement of security. The requirements as to security and suspension in this chapter do not apply to

- (1) the driver or owner if the owner had in effect at the time of the accident an automobile liability policy or bond with respect to the vehicle involved in the accident, except that a driver is not exempt if at the time of the accident the vehicle was operated without the owner's express or implied permission;
- (2) the driver who is not the owner if there was in effect at the time of the accident an automobile liability policy or bond with respect to his driving of vehicles not owned by him;
- (3) a driver or owner whose liability for damages resulting from the accident is, in the judgment of the department, covered by another form of liability insurance policy or bond;
- (4) a person qualifying as a self-insurer under § 400 of this chapter or to a person operating a vehicle for a self-insurer;
- (5) the driver or owner of a vehicle involved in an accident in which no injury or damage was caused to the person or property of anyone other than the driver or owner;
- (6) the driver or owner of a vehicle which at the time of the accident was parked, unless the vehicle was parked at a place where parking was at the time of the accident prohibited by a law or ordinance;
- (7) the owner of a vehicle if at the time of the accident the vehicle was operated without his express or implied permission or was parked by a person operating the vehicle without the permission;
- (8) the owner of a vehicle or the driver of a vehicle operating it without permission if at the time of the accident the vehicle was owned or leased to the United States, this state or a political subdivision of this state or a municipality of the state; or

(9) the driver of a motor vehicle when the vehicle was in the performance of a business in Alaska.

Application for a motor vehicle license from the provisions of the responsibility Act required by a certificate of liability insurance in Alaska.

And to nonresident vehicle registrars effect at the time of liability policy driver-owner of Alaska must have accident by a certificate of liability insurance in Alaska requirements of the responsibility Act suspension shall be effective as to Alaska. — If the Alaska, the only person with respect to his business in Alaska effective regard to power of attorney.

Sec. 28.20.070. Bond is effective insurance company state, except as to bodily injury exclusive of injury to or damage limit for of bodily injury and if the accident to a limit of no property of other (b) No policy respect to a vehicle registered in a state or the m

Title 28 Motor Vehicles

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STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF FAMILY AND YOUTH SERVICES

6 In the matter of Bernie and )  
7 Mary Holland, a Licensed Child )  
8 Foster Home, )  
9 Respondents. ) NO. 4190

CHRONOLOGICAL SUMMARY

11 1972 Mary and Bernie Holland begin  
12 accepting foster children into their  
13 home in Juneau, Alaska  
14 1972-1981 H&SS consistently evaluates Holland  
15 foster home as one of the best in  
16 Alaska.  
17 October 1978 H&SS/DFYS adopts regulations  
18 governing foster child care  
19 September 16, 1981 Artie J, a foster child placed by  
20 the State at the Holland's home,  
21 sexually molests the Holland's 8  
22 year old son. Hollands request  
23 State remove AJ from their home and  
24 obtain psychological counseling for  
25 him.  
26 Mid-October, 1981 Rumors circulate at DFYS that BG  
27 Holland will complain to Ombudsman  
28 about State's "mishandling" of AJ  
29 case. Rumors circulate at DFYS that  
30 Bernie Holland uses drugs, beats his  
31 wife, molests female employees.  
32 October 31, 1981 AJ, placed in Gisel foster home,  
rapes and sodomizes young daughter  
of foster parents. State had  
obtained no psychological counseling  
for AJ. H&SS' worries escalate  
regarding possible complaint to  
Ombudsman by Mr. Holland.  
October 23 -  
November 9, 1981 Dr. Lobo investigates Holland House,  
finds rumors unsubstantiated. H&SS  
Pugh telephones BG Holland and  
states: "You won't get a license for  
your group foster home; no money in  
the budget this year, or next year."

1	November 1, 1981	H&SS employee Danneker tells Father Lobo "If it wasn't for those goddam Hollands this would never have happened." (AJ's rape incident of 10/81 at Gisel home)
2		
3		
4	November 13, 1981	BG Holland makes formal complaint to Ombudsman re H&SS failures on AJ case.
5		
6	November-December, 1981	Alaska Foster Parent Association tells BG Holland "If you file a complaint, DFYS will lay formal allegations against you. That's their standard operating procedure in Anchorage."
7		
8		
9		
10	December, 1981	All foster children removed from BG Holland home. H&SS explains this as merely coincidental and "natural attrition."
11		
12	June 4, 1982	Holland House group home provisional license signed by Kay Smith, H&SS (license # 235005)
13		
14	June 4, 1982	Highly laudatory personnel evaluation for Father Lobo received.
15		
16	June 8, 1982	Father Lobo attends H&SS meeting to discuss Holland group home application. Lobo speaks favorably of Hollands. All administrators opposed to granting Hollands a group home license.
17		
18		
19	June 10, 1982	H&SS, Mr. Pugh, calls meeting with BG Holland, Reece, Hansen, Monroe, & Walker to reject Holland group home application.
20		
21		
22	June, 1982	H&SS, Mrs. Borkowski hears Mr. Reece at Regional Office, call BG Holland ("that son of a bitch...").
23		
24	July, 1982	H&SS, Mrs. Borkowski, hears Reece and Smith say about BG Holland "We'll shut him up and he'll never get his hearing..." (to appeal denial of group foster home license).
25		
26		
27	July 13 (or 16?), 1982	DFYS decides to suspend Father Lobo
28	July 14, 1982	Danny H. and Mickey H. accuse BG Holland of bad actions.
29		
30	July 15, 1982	Evening meeting: H&SS Olson, BG Holland, Dr. Brandaman, Dr. Horchover, Mickey H. Mickey H.
31		
32		

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admits allegations against BG Holland were lies by her and Danny H; only an attempt to show anger, frustration.

July 16, 1982

H&SS, Mr. Reece, receives written and oral reports from Probation Officers Olson and Anderson clearing BG Holland. Reece orders Danneker to investigate and "get Holland, I've got my orders."

July 16, 1982

DFYS orders highly unusual investigative procedure: Holland file removed from "Family" side of DFYS (Father Lobo) and permanently given over to "Youth Services" side of DFYS (Danneker, Reece and AJ's Probation Officer, Mr. Wild).

July 23, 1982

H&SS, Danneker and Tuovinen arrive unannounced at BG Holland home, make allegations against BG Holland of child molestation; call BG Holland "asshole"; threaten to remove all foster children from Hollands. Danneker and Tuovinen present a formal written document accusing the Hollands of thirteen allegations, including child molesting/sexual abuse.

July 28, 1982

*smoking clope*

Danneker receives phone call tipping him off that BG Holland is aware of Danneker's misbehavior in Wrangell (sleeping with foster mother, smoking marijuana in state vehicle while on duty; being caught smoking marijuana in state vehicle by child he was assigned to supervise as the child's probation officer). *Reece Parents*

August 5, 1982

Laurie Vaughn conducts Standard by Standard evaluation of Holland House. Hollands cooperate fully.

August 6, 1982

H&SS, Mr. Reece, asks Alaska State Troopers to investigate BG Holland to see if BG Holland had access to AJIS system. AST later reports Holland has no access to AJIS.

August 11, 1982

Alaska State Troopers respond to H&SS Monroe's request for criminal history information on Mary and BG Holland. AST later reports no criminal history exists.

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August 17, 1982

Investigator Danneker makes final report directly to Mr. Pugh. Report was approved by Reece and finds all allegations uncontradicted. Recommends license revocation.

August 20, 1982

Danny H files affidavit with H&SS stating all charges made 7/15/82 against BG Holland false

September 27, 1982

DFYS officially closes its "investigation" of Hollands. DFYS concludes "most allegations were uncontradicted." Notifies Hollands of conclusions.

November 11, 1982

BG Holland requests and receives meeting with Commissioner Beirne, H&SS to seek settlement. Botelho tells Holland "Danneker bungled the investigation." Botelho tells Holland "Reece doesn't think you have been punished enough."

JAN. meet  
Dec. meet

December 1, 1982

H&SS, Mr. Reece, files formal accusation of BG Holland incorporating by reference thirteen allegations of 7/23/82.

December 2, 1982

H&SS, Mr. Reece, receives letter from Danny H. admitting falsity of charges against Hollands; DH explains reasons for making false charges.

December 3, 1982

BG Holland requests meeting with Mr. Reece to discuss settlement.

December 15, 1982

H&SS, Mr. Reece, receives letters from Mickey H. and Kathy S. admitting falsity of charges against BG Holland.

Dec 20, 1982.

AST investigates BG Holland upon insistance of Lew Reece for inter ferring with an investigation and divulging <sup>confidential</sup> information to another foster parent.

JAN 19, 83

Botelho & Pugh ask Holland to meet with them.

NOTIFICATION OF COMPLAINT

#12

Complaint registered to: Division of Family & Youth Services  
515 Willoughby Avenue  
Juneau, Alaska 99801

000239

Regarding: Bernie & Mary Holland Foster Home  Licensed  
(Name of Facility)

Address: P.O. Box 67, Juneau, AK  Unlicensed

Phone: 586-1724

Date complaint received: July 15, 1982

The following complaints were received by the Division of Family and Youth Services regarding the above facility:

1. Allegation that Bernie and Mary Holland yell and direct vulgar and abusive language towards foster children. [7AAC 50.450, (2)]
2. Allegation that Bernie Holland frequently hits foster children with a stick, ruler, yardstick and his hands. [7AAC.50.450, (1) (5)]
3. Allegation that Bernie Holland squirted lemon juice into a resident's mouth, as punishment, and in the process of the resident resisting, used force to open the resident's mouth by holding the jaw and applying pressure. [7AAC 50.450, (1)]
4. Allegation that Bernie and Mary Holland are providing Day Care in their home for from 2-5 children. [7AAC 50.430(b) (d)]
5. Allegation that there is not sufficient space for each foster child to have specific place to keep his/her own personal possessions. [7AAC 50.540(c)]
6. Allegation that the Holland children have played with, destroyed, broken or lost the foster childrens personal possessions. [7AAC 50.420(e)]
7. Allegation that the Holland children are allowed to annoy and "bug" the foster children. When a conflict arises over this issue, that the foster children are verbally abused, and that "the foster children are always wrong, and the Holland children are always right". [7AAC 50.450, (2) (5)]
8. Allegation that adult boarders are living in the Holland foster home and that they are sharing sleeping quarters with foster children. [7AAC 50.420]

This paper is a "Chrono" of events that have happened since September 1981

1. In September 1981 we put in an application for a group home license for teenagers.
2. On September 23, 1981 we had a fourteen year old child removed from our home as my wife caught him trying to molest our eight year old son.
3. Mid-October 1981--- Rumors began to spread around the Regional office about our over-reacting towards having that child removed from our home that was trying to molest our son. The P.O. Bob Wild wrote a report to Dr. Tony Mander and called us over-reactors for having the child removed when we did.
4. Further rumors were spreading in the division-- I beat my wife, drink excessively, use drugs, and molest my female children.
5. Dr Alinio Lobo "informally checked" on these rumors from Oct 1981 through November 1981 and found no wrong doing, in fact just the oposite.
6. October 30, 1981---m there was a meeting in the Regional office that was called by Ms. Kay Smith. The meeting was about my proposed group home proposal. In attendance was Dr. Lobo, Ms Kay Smith, Mr. Lew Reece and Myself. During the meeting, my proposal was rejected for group home application and an improved version was asked for.
7. October 31, 1981---m The same 14 year old boy who we had removed from our home was arrested by the Alaska State Troopers for rape and sodomy on a 6 year old girl who was a member of the household the boy was placed in by his P.O. Wild.
8. November 12, 1981-- I recieved a telephone call from Mr. John Pugh the Director of Family & Youth Services while I was at work at the Alaskan Coin connection located at 723 West 10th Street. He called to tell me that no funds existed in the budget to support my group home. I informed him that I have never asked the department for money and he stated that the department suffered a huge budget cut and that funds would not be available for the next year for my group home. His conversation then got around to Art Johnson and the incident in our home and he said to me " We've had staff meetings concerning that incident and we've got our asses covered."
9. November 13, 1981-- I filed a written complaint with the State Ombudsman's office of Gross Negligence against the P.O. Bob Wild. I also stated in that same corresspondance that I was told about the no funds for the group home.
- 682/10. When Ms. Smith learned of my filing a complaint she stated to Helen Borkowski that " His name is shit in my book" And when Ms. Borkowski asked her who she was talking about she said "That Bernie Holland""He filed a complaint with the Ombudsman's office and now he a can't be trusted, he'll probably go running to the Ombudsman every chance he gets".

101A.

→ **Investigated by Lobo.**

11. Between the dates of November 13, 1981 and December 15, 1981 all the children were removed from our home. Ms Smith testified under oath that this was due to "natral attrition".
12. December 11, 1981--- Mr. Lew Reece wrote a confidential memo to Mr Dave ARnold with a copy to Mr John Pugh telling him of my meeting with them on October 30, 1981 and my group home proposal.
13. January 13, 1982 --- Submitted my new group home proposal and when Ms Smith saw this she stated in from of Ms Helen Borkowski " The nerve--- he'll get his license ~~xxx~~ over my dead body.
14. In March 1982 the division began sending hard core cases to our home as they were then under investigation by the Ombudsman's office.
15. In May 1982 the Ombudsman sent a copy of his findings to Mr. John Pugh and on June 7, 1982 Mr Pugh acknowledged the Ombudsman's report with a letter dated June 7, 1982. By this acknowledgement he was aware of my group home plans.
16. June 4, 1982 Ms Kay Smith signed the license approval form and then went to Central Office and had a meeting with Ms Yvonne Walker concerning my group home license, and in fact gave her a copy of my Program Evaluation & Licensing Recommendation. A meeting was held in the C.O. and my license was denied that day. The same day as approval. Everyone denied this meeting except the secretary Ms Helen Borkowski who stated she recieved a telephone call from Ms Smith who stated she was in Walkers office.
17. June 8, 1982-- a meeting was held in Central Office with John Pugh, Yvonne Walker, Connie Hansen, Alinio Lobo and Pat Monroe. My License was discussed and denied at that meeting. Connie Hansen stated under oath that it was denied at this meeting and Dr Lobo left this meeting with the same feeling. At 11:30 am that same date I was in Dr Lobo's office when he recieved a phone call from Yvonne Walker telling him of the meeting and to bring the important docyments for this case. Dr Lobo had my file at that time as it was on his desk because he copied my Standard-By-Standard Evaluation, Program Evaluation & Licensing Recommendation as well as the CWS 80A for me. Pugh stated he read my file and program evaluation before that June 8, 1982 meeting and had questions for Dr Lobo and Connie Hansen. It's impossible because my file never left the Regional Office until the 9th of June 1982. Pat Monroe called me the afternoon of June 8th and wanted ameeeting with me on the morning of the ninth to discuss my license. I set up a meeting for the 10th of June and during that meeting John Pugh denied my license three times. Pat Monroe stated she took my file home the night before to study it upon orders from John Pugh and found too

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

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Date complaint received: July 15, 1982

The following complaints were received by the Division of Family and Youth Services regarding the above facility:

9. Allegation that adult boarders participate in the family meetings and trials and are allowed to vote on foster childrens punishment [7AAC 50.410(a)]
10. Allegation that three foster children and one adult boarder sleep in a bedroom with no windows. [7AAC 50.560(e)(3)]
11. Allegation that family meetings are held late at night and often last from 11:00 p.m. to 2:00 a.m., and that foster children do not get enough sleep because of this and that one foster child fell asleep at a meeting and was punished for it. [7AAC 50.410]
12. Allegation that Bernie Holland has belittled and used cruel and derogatory remarks when describing a foster child to other foster children, and to other persons who have entered the foster home. [7AAC 50.450(2)]
13. Allegation that Bernie Holland patted a female resident on the bottom, grabbed a female resident around the waist and while "wrestling, grabbed her legs to get a cheap feel." [7AAC 50.410]

This paper is a "Chrono" of events that have happened since September 1981

1. In September 1981 we put in an application for a group home license for teenagers.
2. On September 23, 1981 we had a fourteen year old child removed from our home as my wife caught him trying to molest our eight year old son.
3. Mid-October 1981--- Rumors began to spread around the Regional office about our over-reacting towards having that child removed from our home that was trying to molest our son. The P.O. Bob Wild wrote a report to Dr. Tony Mander and called us over-reactors for having the child removed when we did.
4. Further rumors were spreading in the division-- I beat my wife, drink excessively, use drugs, and molest my female children.
5. Dr Alinio Lobo "informally checked" on these rumors from Oct 1981 through November 1981 and found no wrong doing, in fact just the oposite.
6. October 30, 1981---m there was a meeting in the Regional office that was called by Ms. Kay Smith. The meeting was about my proposed group home proposal. In attendance was Dr. Lobo, Ms Kay Smith, Mr. Lew Reece and Myself. During the meeting, my proposal was rejected for group home application and an improved version was asked for.
7. October 31, 1981---m The same 14 year old boy who we had removed from our home was arrested by the Alaska State Troopers for rape and sodomy on a 6 year old girl who was a member of the household the boy was placed in by his P.O. Wild.
8. November 12, 1981-- I recieved a telephone call from Mr. John Pugh the Director of Family & Youth Services while I was at work at the Alaskan Coin connection located at 723 West 10th Street. He called to tell me that no funds existed in the budget to support my group home. I informed him that I have never asked the department for money and he stated that the department suffered a huge budget cut and that funds would not be available for the next year for my group home. His conversation than got around to Art Johnson and the incident in our home and he said to me " We've had staff meetings concerning that incident and we've got our asses covered."
9. November 13, 1981-- I filed a written complaint with the State Ombudsman's office of Gross Negligence against the P.O. Bob Wild. I also stated in that same corresspondance that I was told about the no funds for the group home.
- 682/10. When Ms. Smith learned of my filing a complaint she stated to Helen Borkowski that " His name is shit in my book" And when his. Borkowski asked her who she was talking about she said "That Bernie Holland""He filed a complaint with the Ombudsman's office and now he a can't be trusted, he'll probably go running to the Ombudsman every chance he gets".

10A.

→ **Investigated by Lobo.**

11. Between the dates of November 13, 1981 and December 15, 1981 all the children were removed from our home. Ms Smith testified under oath that this was due to "natral attrition".
- 12, December 11, 1981--- Mr. Lew Reece wrote a confidential memo to Mr Dave ARnold with a copy to Mr John Pugh telling him of my meeting with them on October 30, 1981 and my group home proposal.
13. January 13, 1982 --- Submitted my new group home proposal and when Ms Smith saw this she stated in from of Ms Helen Borkowski " The nerve--- he'll get his license ~~xxx~~ over my dead body.
14. In March 1982 the division began sending hard core cases to our home as they were then under investigation by the Ombudsman's office.
15. In May 1982 the Ombudsman sent a copy of his findings to Mr. John Pugh and on June 7, 1982 Mr Pugh acknowledged the Ombudsman's report with a letter dated June 7, 1982. By this acknowledgement he was aware of my group home plans.
16. June 4, 1982 Ms Kay Smith signed the license approval form and then went to Central Office and had a meeting with Ms Yvonne Walker concerning my group home license, and in fact gave her a copy of my Program Evaluation & Licensing Recommendation. A meeting was held in the C.O. and my license was denied that day. The same day as approval. Everyone denied this meeting except the secretary Ms Helen Borkowski who stated she recieved a telephone call from Ms Smith who stated she was in Walkers office.
17. June 8, 1982-- a meeting was held in Central Office with John Pugh, Yvonne Walker, Connie Hansen, Alinio Lobo and Pat Monroe. My License was discussed and denied at that meeting. Connie Hansen stated under oath that it was denied at this meeting and Dr Lobo left this meeting with the same feeling. At 11:30 am that same date I was in Dr Lobo's office when he recieved a phone call from Yvonne Walker telling him of the meeting and to bring the important docyments for this case. Dr Lobo had my file at that time as it was on his desk because he copied my Standard-By-Standard Evaluation, Program Evaluation & Licensing Recommendation as well as the CWS 80A for me. Pugh stated he read my file and program evaluation before that June 8, 1982 meeting and had questions for Dr Lobo and Connie Hansen. It's impossible because my file never left the Regional Office until the 9th of June 1982. Pat Monroe called me the afternoon of June 8th and wanted a meeting with me on the morning of the ninth to discuss my license. I set up a meeting for the 10th of June and during that meeting John Pugh denied my license three times. Pat Monroe stated she took my file ' home the night before to study it upon orders from John Pugh and found too

18. June 8, 1982-- at approx. 7:30 pm I saw Dr Lobo at the Juncau Airport and he stated to me that he thought my license was going to be denied from what went on at the meeting he was at earlier that day in C.O. He further stated my license was pulled from the clerks desk.

19. Dr Lobo testified he had possession of my file untill 5:00 pm on June 8, 1982 because he put pertinent documents back into my file upon his return from C.O.

20. June 7, 1982 John Pugh wrote a letter to the Ombudsman acknowledging receipt of his report.

21. June 14, 1982--- I telephoned Ms. Pat Monroe in the C.O. and asked her for a written denial based upon her office's verbal denial on June 10, 1982.

~~XXXXXXXXXX~~

22. Written denial done by Pat Monroe on June 15, 1982--- Signed by Ms Walker.

23. Late June 1982--- The secretary Ms Helen Borkowski overheard ~~mine~~, talk between Mr. Lew Reece and Ms Kay Smith, once it was learned I filed for a hearing concerning this denial of licensure,---- to thwart my hearing by counteracting made up allegations that would silence me once and for all.

24. July 14, 1982-- Danny Joe Harrison was sent back to jail for violation of his probation. He was contacted by Robert Danneker and then ~~made~~ <sup>was helped to MAKE</sup> allegations against us. <sup>w/ Danneker</sup>

25. July 15, 1982-- Mickey Horschover made complaints against us to her P.O. Marilyn Olson--- A meeting ~~x~~ was held that evening with her father Dr. Robert Horschover, her psychologist Dr Sonya Brandaman, myself and P.O. Olson. At that meeting she stated that the only reason she was complaining was because she was tired of being punished by the state. And that "Being at Bernie & Mary Holland's house was probably the best thing that ever happened to her because she would probably be dead from drugs or something else". Mr Olson stated he would write his report reflecting we were clear from any wrong doing.

26. During that week the probation department interviewed all residents in my home and on the 16th of July 1982 Mr. Norm Anderson and Mr Marlyn Olson's report to their superior Mr Lew Reece showed no wrong doing in my household and that collusion existed between Mr Danny Harrison and Ms Mickey Horschover. Mr Reece told his P.O.'s that these reports were bullshit and that he had his orders from upstairs and he was going to get that bastard meaning me.

27. I recived a telephone call from an individual telling me even tho I was cleared of any wrong doing, Reece had his orders to get me and that allegations, and this individual told me what they were, would be laided upon me within two weeks.

28. July 23, 1982--- Mr Robert Danneker and Ms Carolyn Touvenen came to my residence and served my wife and I with thirteen allegations. For 1 1/2 hours they harrassed us into trying to answer them with thrates of removing the cjildren and at one point Danneker said to me "Just answer the allegations asshole.

29. At 10:42 p m Robert Danneker (friday night) called my house to tell me they had completed part of there investigation and that he would be serving them on me the next morning at 9:00 am . That evening at 6:00 pm two of my foster children , walked down to the office at 515 willoughby ave and Danneker told them they had new homes for them.

30/ On Junly 24, 1982 I wrote a letter to Mr Danneker telling him I would not answer his allegations.

31. On July 27, 1982 Mr. Danneker wrote me a letter telling me I was impeding his investigation and thereby violated three statutes and that I had ten days to answer him in regards to these allegations..

*AUG 17  
letter*

32. On September 27, 1982 the Division found that all these allegations except one was true. It was referred to the Attorney General's office.

33. On September 23, 1982 the Asst A G informed me that no evidence exists confirming these allegations and that he would take no action on my license when the regional office sent it to him and he called Fred Baxter to tell him of this.

34. I attended a meeting with the Commisioner Helen Beirne with the Asst A G and all she wanted me to do was answer the allegations. She stated that Pugh had really trying to get ahold of me. I refused to sit down with him as he lied at the Oct 4-7 hearing about not knowing about my license application and reading the files, on June 8, 1982.

35. On Oct 11, 1982 I filed purjury charges against Pugh and Monroe with the D A's office with documentation against Pugh.

*Ombuds  
Fingyags*

*36. Nov Met w/Beirne*

*37. JAN 83 Settlement + comprimise Agreement*

*38. Apr Notice of Hearing*

*39.*

# MEMORANDUM

State of Alaska

TO: Mr. Lew Reece  
Regional Administrator  
Southeast Region  
Youth Services

DATE: July 16, 1982

FILE NO:

TELEPHONE NO:

FROM: N.L. Anderson  
Probation Officer II  
Youth Services  
Juneau

SUBJECT: Abuse Allegations

On July 14, 1982, I received a phone call from Bernie Holland, foster parent, about Danny Harrison, one of my clients placed in the Holland home. Mr. Holland said he was about have Harrison removed. Harrison was: (1) lying; (2) failing to perform chores; (3) associating with people he had been restricted from; (4) ripping off other foster children in the house; (5) trying to "scam" Mr. Holland on an unemployment check ploy. I asked Mr. Holland to have Harrison report to me at 11:00 a.m.

Harrison called me at 9:30 a.m. to say he could not come at 11:00, that he had a State Office Skills test scheduled at that time. I instructed Harrison to report at 1:00 p.m. instead.

Upon returning to the office after lunch break, there was a note in my box that Harrison had come in at 12:25 p.m. to see me. At 1:15 p.m. Mr. Holland called to ask if I had seen Harrison. I told him of the test conflict and that Harrison was a no-show for the new time. Mr. Holland said Harrison was in his room playing his guitar.

I drove to the Holland residence to take Harrison for a urine sample, per court order. One of the people he had been associating with is a rather well known (to this office) cocaine user.

On the way to the testing center, Harrison denied allegations Mr. Holland had made earlier of violating the foster home rules and/or Conditions of Release. Upon arriving at the urine testing center, Harrison would not produce a urine sample, saying the timing was bad and he could not urinate. After 15 minutes, I took him to the Johnson Center. Upon threat of being detained, Harrison produced a more than ample urine sample within 5 minutes. Returning to the Holland residence Harrison continued to deny any wrong doing on his part. I decided to have a meeting with Mr. Holland, Harrison and myself to resolve the matter.

I explained to Mr. Holland that Harrison was denying any wrong doing. Mr. Holland, in Harrison's presence, outlined the problems he was having with Harrison. Harrison then admitted to most of the charges, but tried putting the blame on other foster children in the home or saying "I'm trying to be good, you can't expect me to change overnight". He continued to deny the unemployment check "scam". Mr. Holland then called Officer McCracken, JPD, to whom Harrison had boasted of the "scam". With the three of us listening, McCracken outlined the conversation he had with Harrison:

July 16, 1982

Harrison had gone to the Unemployment Office and changed his mailing address from Hollands' to General Delivery. Harrison's plan was to put two of the anticipated checks into his restitution savings fund and hold one back, telling Mr. Holland he had not received it. He planned on blowing the money from the third check.

After this conversation, Harrison admitted it was originally his plan to run the "scam", but since hadn't received the checks yet, and therefore, hadn't pulled off the scam, he hadn't done anything wrong.

Mr. Holland I spoke at length with Harrison about the wrongness of this "scam", whether he had pulled it off or not. Harrison maintained that he had done no wrong. At this point, Mr. Holland left the room. I spoke with Harrison for about 5 minutes and then I left. During that 5 minutes, Harrison had completely changed his story and, in Mr. Holland's absence, was again denying any of his wrong acts. As I left, I saw Mr. Holland and asked him to call me the next day if he decided he no longer could work with Harrison. Mr. Holland asked me to remove him immediately, that he felt he could no longer work with Harrison.

Since the Juneau Receiving Home in the past has refused to accept Harrison and he has no relatives in Juneau, I transported him to the Johnson Center for detention. The staff at Johnson was busy with adult prisoners, so Harrison and I had to wait in the lobby for 30 minutes.

During this wait, Harrison became more and more agitated about being detained. He started by saying the only reason for detention was a "personality conflict" between he and Mr. Holland. Then he said that he "was going to blow the whistle on Bernie tomorrow in Court". He explained that Mr. Holland had physically abused him saying that Mr. Holland had hit him in the arm with a stick on several occasions. In the most recent, Harrison said he shoved Mr. Holland onto the kitchen table after Mr. Holland struck him, breaking the table. Mr. Holland then jumped up and challenged him to fight. The matter diffused with no further blows. Harrison said Merick Habon, another foster child with the Hollands, could verify this.

On July 15, I conducted a low key interview with Habon. Bob Danneker, Foster Care Coordinator, was present. Habon said he was quite happy at the Holland home, that he had not been subject to any verbal or physical abuse. (This is significant, since Habon comes from a very abusive natural home and was fearful upon placement that the foster home would function the same way). He said he had never seen Mr. Holland hit Harrison, either with a stick or a fist. He did say the two have engaged in "friendly" wrestling matches and shadow box with one another.

Habon said the kitchen table was replaced with a more sturdy picnic-type table several days ago because the other table was starting to sag towards the middle. (I was in the Holland house 10-14 days ago for a reception for Lt. Governor Miller and can verify the old table was rather wobbly).

July 16, 1982

In conjunction with allegations Twiggy Horchover made about Mrs. Holland using foul or abusive language, Habon said this had never happened. That it was his experience she was rather quiet. He did say that Mr. Holland does use foul language in the house occasionally.

Habon volunteered that Harrison had been in trouble at the house recently for failing to do chores and for being caught in the girls living area.

At 2:30 p.m. on July 15, a detention hearing was held on Harrison. Following the hearing, I asked Harrison in his attorney's presence to give me a taped statement about the physical abuse. I explained to the attorney that I had an obligation towards the other children placed there if an abusive situation existed. Harrison immediately went into private counsel with the attorney. The attorney then advised me that Harrison's only complaint was of a "personality conflict" between Harrison and Mr. Holland. He explained the "conflict" as being Mr. Holland calling Harrison a "shitbag" and "worthless" in front of the other children.

I told the attorney Harrison had alleged he had been hit with a stick and physically roughed up by Mr. Holland. The attorney again conferred with Harrison and returned to report that Harrison said he had never been hit or otherwise assaulted. Further, Harrison declined to give any taped statement about the "personality conflict".

# STATE OF ALASKA

JAY S. HARRINGTON, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES  
DIVISION OF FAMILY AND YOUTH SERVICES

515 Willoughby Avenue  
Juneau, Alaska 99801  
Phone: (907) 586-1861

September 27, 1982

Bernie and Mary Holland  
P.O. Box 67  
Juneau, Alaska 99802

Dear Mr. and Mrs. Holland:

This is to inform you that the Division's investigation of complaints regarding your foster home has been concluded. You have responded to allegation #10 that foster children have been relocated from the basement to the upstairs bedroom. With that exception, no response or corrective action plan to the allegations which were delivered to you on July 23, 1982 has been received by the Division. You have continued to be unwilling to discuss the allegations, therefore the findings in this letter are based solely on the Division's investigation without any information provided by either of you.

## INVESTIGATION FINDINGS

1. Allegation: Bernie and Mary Holland yell and direct vulgar and abuse language towards foster children.

Findings: 75 percent of the foster children interviewed stated that verbal and vulgar language had been directed at them, or other foster children, in the home.

Required: "..... in no event may any child in care be subjected to verbal abuse...." 7 AAC 50.450,(2).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

2. Allegation: Bernie Holland frequently hits foster children with a stick, ruler, yard stick and his hands.

Findings: 87 percent of foster children interviewed stated they had been hit by Mr. Bernie Holland with either a stick or his hand. A majority of foster children interviewed stated that they witnessed Mr. Holland hitting other foster children.

Required: ".....in no event may a child in care be disciplined by shaking or by delivering a forceful blow with hand or weapon..." 7 AAC 50.450,(5).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

3. Allegation: Mr. Bernie Holland squirted lemon juice into a resident's mouth as punishment, and in the process of the resident resisting, used force to open the resident's mouth by holding the jaw and applying pressure.

Findings: Although this allegation is an isolated incident with the alleged victim graphically describing what happened, there is no corroborating evidence to support the allegation.

Required: ".... in no event may a child in care be subjected to unusual, severe, cruel, capricious, humiliating, or unnecessary punishment;" 7 AAC 50.450,(1).

Conclusion: This allegation is found to be unsubstantiated. This means that the violation could have occurred as alleged, but the evidence is not conclusive, or sufficient evidence is not available to make a determination.

4. Allegation: Mr. Bernie and Mrs. Mary Holland are providing day care in their home for 2-5 children.

Findings: 100 percent of the foster children interviewed stated that they observed day care being provided in the Holland home.

Required: Number of foster children permitted in home, ".... no more than eight children in all are permitted in any one home..." ".... no more than five children of any age who are unrelated to the foster parents are permitted." 7 AAC 50.430(b)(d).

Day care of children and commercial care for the aged, or maternity, or convalescent patients may not be combined with foster care of children without prior approval of the Division representative. 7 AAC 50.440(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows the standard was violated.

5. Allegation: There is not sufficient space for each foster child to have specific place to keep his/her own personal possessions.

Findings: This allegation deals specifically with the female residents who lived in the basement and shared a room with an alleged boarder. All female residents interviewed stated that they did not

have enough room for their possessions due to the alleged boarder using up most of the available space.

Required: "..... there must be a sufficient space and a specific place for each child to keep his own clothing and personal possessions." 7 AAC 50.450(c).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

6. Allegation: The Holland children have played with, destroyed, broken or lost the foster children's personal possessions.

Findings: 85 percent of the foster children interviewed stated that they had either had lost, or had destroyed or had broken personal possessions due to the Holland children. They also stated that even though they complained to the Holland's about the situation, it was never corrected.

Required: ".....foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children." 7 AAC 50.410(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows the standard was violated.

7. Allegation: The Holland children are allowed to annoy and "bug" the foster children. When a conflict arises over this issue, that the foster children are verbally abused, and the "foster children are always wrong, and the Holland children are always right."

Findings: 80 percent of the foster children interviewed stated that they felt "bugged" at times by the Holland children, and when the issue was confronted the foster children were yelled at for causing a disturbance.

Required: "..... in no event may a child in care be denied treatment equal to that of the foster parents' own children as a method of discipline;..." 7 AAC 50.450(7).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

8. Allegation: Adult boarders are living in the Holland foster home and they are sharing sleeping quarters with foster children.

Findings: That there are two additional adults living in the Holland foster home without proper knowledge of the Division.

Required: "Foster parents shall report to the Division representative any significant changes in the household....that would affect the ability to care for foster children." 7 AAC 50.420(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows the standard was violated.

9. Allegation: Adult boarders participate in the family meetings and trials and are allowed to vote on foster children's punishment.

Findings: A majority of foster children interviewed stated they had been subject to or observed alleged boarders participating in family meetings or trials.

Required: "Foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children." 7 AAC 50.410,(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

10. Allegation: Three foster children and one adult boarder sleep in a bedroom with no windows.

Findings: By personal observation from myself, Carolyn Touvinen, CCS II, and personnel admission from Mr. Holland, this was found to be true.

Required: ".....each foster home must have one or more windows which are large enough for emergency exit and rescue in each sleeping room."

Conclusion: This allegation was found to be valid upon inspection. However, Mr. Holland agreed to move the foster children to another room, which was accomplished within a 24-hour period. Therefore, at this date, the allegation is found to be invalid as long as that particular room is not used for foster children, or until the room is brought up to standards.

11. Allegation: Family meetings are held late at night and often last from 11:00 p.m. to 2:00 a.m., and that foster children do not get enough sleep because of this and that one foster child fell asleep at a meeting and was punished for ...

Findings: A majority of foster children interviewed stated that family meetings and trials could and would last until all hours of the night, and also stated punishment was dealt out for falling asleep.

Required: "Foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children." 7 AAC 50.410,(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

12. Allegation: Bernie Holland has belittled and used cruel and derogatory remarks when describing a foster child to other foster children, and to other persons who have entered the foster home.

Findings: All foster children interviewed in regard to the allegation stated they had been subject to or witnessed another foster child be subjected to belittlement or derogatory remarks.

Required: ".....in no event may a child in care be subjected to verbal abuse, derogatory remarks about himself or members of his family...." 7 AAC 40.450,(2).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows that the standard was violated.

13. Allegation: Bernie Holland patted a female resident on the bottom, grabbed a female resident around the waist and while "wrestling, grabbed her legs to get a cheap feel".

Findings: A female foster child made this complaint (patting on bottom) in writing. She stated that it happened and that she did not like it. The wrestling incident was observed by another foster child, who thought that Mr. Holland's behavior was inappropriate. This incident (wrestling) is also in a written statement.

Required: "The foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children." 7 AAC 50.410,(a).

Conclusion: This allegation is found to be valid. Valid means that the evidence shows the standard was violated.

In addition to the July 23, 1982 allegations, the Division became aware of additional non-compliance items when a standard-by-standard evaluation was conducted on your home from August 4, 1982 to August 6, 1982 for consideration of your application to operate a residential child care facility. The following areas would be in non-compliance under 7 AAC 50.310 to 7 AAC 50.620:

1. 7 AAC 50.410(1) - "An annual license may not be issued without written evidence that all members of the household 16 years of age or older are free from active tuberculosis;"

According to the standard-by-standard evaluation there was no record of written evidence that this requirement has been met. On September 21, 1982 tuberculin clearances dated September 16, 1982 were received for both of you. If there are any other adult members of the household, additional tuberculin clearances are required.

2. 7 AAC 50.560(b) - "A 5-lb ABS dry chemical fire extinguisher or its equivalent must be charged at all times and strategically located; more than one is required for multi-level homes."

The standard-by-standard states that there is only a 2 1/2 lb. ABC extinguisher in the basement area which has been previously used as living space for foster children. While the Division has interpreted and implemented the above requirement as meaning that there must be a 5lb. extinguisher on every level of a multi-level home, the Division concedes that your home has two acceptable extinguishers and therefore, meets the requirement for more than one for multi-level homes. Correction is advised, but not required.

3. 7 AAC 50.570(f) - "Firearms must be unloaded and stored in a place inaccessible to young children. Ammunition must be stored separately in a place inaccessible to children."

It was reported in the standard-by-standard that one hand gun was accessible to children while loaded and that the gun was unloaded in front of the licensing worker. There is no issue with compliance at this time as the gun was unloaded. However, in the future all guns must remain unloaded and ammunition stored separately and inaccessible to children.

#### EVALUATION AND RECOMMENDATION

All of the above allegations are of a serious nature and all except #3 were found valid upon investigation. The three additional findings in the recent standard-by-standard evaluation are also serious. You have demonstrated a total lack of cooperation with the Division in dealing with the allegations. If corrections have occurred, you have failed to inform the Division. For example, at least six telephone calls to your attorney were necessary to obtain the tuberculin clearances.

Mr. and Mrs. Holland

-7-

September 27, 1982

Given the pattern of violations, and your refusal to respond or to formulate a corrective action plan, the Division is referring your case to the Department of Law for consideration of license modification, license suspension, or revocation. You will be informed of the Department of Law's recommendation to this Department.

Sincerely,



Lew Reece  
Regional Administrator  
SERO - Juneau

Enclosure

LR:JRP:PM:pvk

# STATE OF ALASKA

JAY S. HALSMORD, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES  
DIVISION OF FAMILY AND YOUTH SERVICES

515 Willoughby Avenue  
Juneau, Alaska 99801  
(907) 586-1861

December 1, 1982

Bernie and Mary Holland  
Box 67  
Juneau, Alaska 99802

Dear Mr. and Mrs. Holland

RE: Holland Foster Home

You are hereby notified that the enclosed Accusation has been filed with the Department of Health and Social Services, Division of Family and Youth Services. The Division of Family and Youth Services will conduct a hearing, if requested, to decide the issues presented in the Accusation.

### Notice of Defense and Request for a Hearing

The enclosed accusation was prepared pursuant to AS 44.62.360 and sets forth the issues that will be decided by the Department of Health and Social Services, Division of Family and Youth Services. This letter constitutes notice as required by AS 44.62.380 that you may request a hearing on the issues set forth in the Accusation.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Division of Family and Youth Services within 15 days after receipt of the enclosed Accusation, the Division of Family and Youth Services pursuant to AS 44.62.530 will decide in your absence the issues presented in the Accusation. The request for a hearing may be made by delivering or mailing the enclosed Notice of Defense to the Division of Family and Youth Services in the enclosed envelope, postage prepaid. Mailing of the Notice of Defense signed by you or on your behalf and returned to the Division of Family and Youth Services within 15 days in the enclosed addressed envelope, postage prepaid, acknowledges receipt of the enclosed Accusation and constitutes a notice of defense pursuant to AS 44.62.390.

Sincerely,



Lew Reece  
Regional Administrator

Enclosures

Accusation  
Notice of Defense  
Envelope (postage prepaid)

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LEW:IRP-PM-ksw

Bruce M. Botelho  
Assistant Attorney General  
Office of the Attorney General  
Pouch K  
Juneau, Alaska 99811  
(907) 465-3603

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF FAMILY AND YOUTH SERVICES

In the matter of Bernie and  
Mary Holland, a Licensed  
Child Foster Home,  
  
Respondent.

Facility No. 4190

ACCUSATION  
(AS 47.35.040, AS 44.62.360)

Petitioner Lew Reece, Regional Administrator, Division of Family and Youth Services, Alaska Department of Health and Social Services, alleges:

1. This is a proceeding authorized by AS 47.35.040(b) and AS 44.62.360 to condition child foster home license 4190, held by Bernie and Mary Holland, hereinafter "respondents."

2. The respondents were issued License No. 4190 on May 23, 1982 authorizing them to operate a child foster home at 707 West 10th Street, Juneau, Alaska.

3. On or about July 15, 1982 the Division of Family and Youth Services received complaints from two youths who had been placed in the respondents' home. The allegations consisted for the most part of charges that respondents had been physically or verbally abusive, had taken inappropriate disciplinary measures, had failed to exercise restraint over their own children, had provided day care services, and had adult boarders in the home without division approval.

4. The division immediately initiated an investigation. The investigation included interviews with respondents and several youths who had been in respondent's care. Respondents refused to discuss most allegations with the division, claiming that the division had harrassed them and declaring:

"In regard to your expectations of receiving a telephone call from me . . . to discuss those "allegations;" As I expressed during our meeting on July 23, 1982, these "allegations" will not be addressed by me . . ."

5. On July 27, 1982 the division again urged respondents to reply to the allegations. No reply was received.

6. In the succeeding weeks the division, through the Department of Law, attempted to conciliate with respondents, to no avail.

7. On September 27, 1982 the division finally closed its investigation and, because of the summary failure of respondents to address the complaints, concluded that most allegations were uncontradicted.

(Accordingly, the division referred the matter to the Department of Law for further action.) *Lie! They recommended revocation.*

8. The Department of Law again initiated steps to reconcile the differences between respondents and the division, including scheduling of a meeting with Helen Beirne, Commissioner of Health and Social Services.

9. Respondent Bernie Holland has consistently refused to formally respond to the allegations, making it difficult, if not impossible, for the development of on-going professional relationships between the division and the licensed home, a prerequisite to determinations of compliance with state law.

10. Respondents' failure to cooperate, as set forth above, is a basis for conditioning of respondents' license under AS 44.62.360.

ACCORDINGLY, Accuser requests that

1. Foster Home Care License No. 4190 be amended to include the following conditions:

- a. licensees will notify the department of all non-related adults living in the home for more than 21 days;
- b. licensees will seek department approval of all day care services provided in the home;
- c. licensees will provide the department a written description of their behavior management and discipline techniques (including any planned use of corporal punishment or family trials) within 30 days of issuance of the license with conditions; and
- d. licensees will cooperate with all department requests for information related to the operation of their child foster home, license 4190.

DATE: 12/1/82

Lew Reece  
Lew Reece

152

STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF FAMILY AND YOUTH SERVICES

In the Matter of:

Bernie and Mary Holland  
Child Foster Home

Respondent

Facility No. 4190

NOTICE OF DEFENSE

The respondent, pursuant to AS 44.62.390, hereby acknowledges service of the Accusation or Statement of Issues and gives notice of defense on the following grounds:

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A hearing on the matters set forth in the Accusation or Statement of Issues is requested.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Respondent

Mailing  
Address: \_\_\_\_\_

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NOTE: This Notice of Defense must be signed by or on behalf of respondent, must set forth respondent's mailing address and must be filed with the Division of Family and Youth Services within 15 days of receipt.



# ombudsman

John B. Chenoweth

State of Alaska

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch WD  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

## MEMORANDUM

TO: John B. Chenoweth, Ombudsman

THRU: Duncan C. ~~Fowler~~ Ombudsman Regional Representative *Five*

FROM: Bruce Aronson, Ombudsman Assistant *Bruce*

SUBJ: Ombudsman Complaints J82-0689, J82-0728, J82-1136, and J82-1188

DATE: January 28, 1983

Four complaints, J82-0689, J82-0728, J82-1136, and J82-1188, direct the attention of the office to investigatory and licensing practices of the Southeast Regional Office of the Division of Family and Youth Services. Due to the interrelationship of the four, they were examined at the same time by this investigator.

Throughout this memorandum, the names of minors involved in these complaints have not been used, rather initials were substituted for their names.

A summary of my investigation of each complaint is provided below:

### J82-0689

Bernie and Mary Holland filed a complaint with this office on July 26, 1982, alleging that the Division of Family and Youth Services (DFYS) is failing to conduct a proper investigation of their foster home license, and is harassing them. Investigation of their complaint has focussed on whether the agency had sufficient reason to initiate an investigation, and whether the investigation was properly conducted.

The Hollands are Juneau residents with a decade of experience in foster care involving Juneau youth. Their complaints were filed with the Juneau office after they were served a NOTIFICATION OF COMPLAINT by officials of the Division's Juneau regional office. The officials advised that the notification, containing 13 allegations, was served in conjunction with information received by division personnel during the preceding 10 day period. Investigation of the allegations was a prerequisite to a decision by division officials to modify or revoke the Hollands' foster home license.

A copy of the notification is attached to this memorandum.

January 28, 1983

## Background:

On July 14, 1982, Norm Anderson, Probation Officer II, transported a minor, D.H., to the Johnson Human Services Center for detention purposes. In a memorandum from Mr. Anderson to Lew Reece, Regional Administrator, DFYS, dated July 16, 1982, Mr. Anderson states:

During this wait, D.H. became more and more agitated about being detained. He started by saying the only reason for detention was a "personality conflict" between he and Mr. Holland. Then he said that he "was going to blow the whistle on Bernie tomorrow in court". He explained that Mr. Holland had physically abused him saying that Mr. Holland had hit him in the arm with a stick on several occasions. In the most recent, D.H. said he shoved Mr. Holland onto the kitchen table after Mr. Holland struck him, breaking the table. Mr. Holland then jumped up and challenged him to fight. The matter diffused with no further blows. D.H. said M.H. (male), another foster child with the Hollands, could verify this.

Mr. Anderson also reports in this memorandum that M.H. (male) said the kitchen table was replaced with another table, since the older table was sagging. Mr. Anderson confirms that "the old table was rather wobbly." M.H. described Mary Holland as a quiet person, and that she did not use "foul or abusive language." M.H. does indicate that Bernie Holland has used foul language. No written statement from M.H. was taken by DFYS.

In a memorandum from Candace Canfield, YCIII, Johnson Human Services Center to Marlyn Olson, Probation Officer III, dated July 14, 1982, it was reported that D.H. told both Ms. Canfield and Margaret Pugh, Program Director, Johnson Human Services Center, that Bernie Holland hit him, and that Mr. Holland uses a stick to hit people, including D.H. Also, D.H. and Bernie Holland, on more than one occasion, stayed up late arguing. D.H. closed by saying that M.H. (female) was also hit with a stick, and would confirm this information. Ms. Pugh then called Marlyn Olson and requested Mr. Olson immediately visit the Johnson Human Services Center.

Mr. Olson indicates in his file notes of July 14, 1982, that when Mr. Olson met with D.H., D.H. had already contacted his attorney. Mr. Olson reported that D.H. said his attorney advised D.H. to remain silent. Mr. Olson wrote in his notes that, "He did elude [sic] however two serious problems..." Mr. Olson also indicates that D.H. felt that M.H. (male) and M.H. (female) could corroborate his statements.

In his July 16, 1982 memorandum, Mr. Anderson states:

On July 15, I conducted a low-key interview with M.H. (male). Bob Danneker, Foster Care Coordinator, was present. M.H. said he was quite happy at the Holland home, that he had not been subject to any

verbal or physical abuse. (This is significant, since M.H. comes from a very abusive natural home and was fearful upon placement that the foster home would function the same way). He said he had never seen Mr. Holland hit D.H., either with a stick or a fist. He did say that the two have engaged in "friendly" wrestling matches and shadow box with one another.

The last two paragraphs of Mr. Anderson's memorandum describe a meeting with Mr. Anderson, D.H. and D.H.'s attorney. The meeting took place at 2:30 p.m. on July 15, 1982. The attorney (after conferring with D.H.) advised that D.H. had only one complaint, regarding a "personality conflict" between D.H. and Bernie Holland. Anderson also wrote that the attorney said the conflict was that Bernie Holland called D.H. a "shitbag" and "worthless" while other children were present. When the attorney was asked about D.H.'s allegation that Bernie Holland had hit D.H. with a stick, the attorney stated (after conferring with D.H.), "that D.H. said he had never been hit or otherwise assaulted. Further, D.H. declined to give any taped statement about the 'personality conflict'."

Robert Danneker's notes of July 20, 1982, describe a meeting with D.H. At that time, D.H. agreed to give a written statement to Danneker by Thursday, July 22, 1982. A statement was provided by D.H. on July 22, 1982, which said Bernie Holland and D.H. got into a scuffle, and Bernie challenged D.H. to fight. D.H. also said:

Bernie was sitting on the couch next to M.H. (female) and I was sitting at the table when Bernie and M.H. started wrestling sort of and Bernie was grabbing M.H. around the waste [sic] and her leg's [sic] and it looked more like Bernie was trying to get a cheap feel off her he does this all the time and he has this stick that is about two and a half feet long that he smack's [sic] us with and it hurt's [sic] several times' [sic] I asked him not to smack me but he still does.

D.H.'s assertion is deserving of independent verification. A psychological evaluation (a copy of which is in the DFYS files) prepared by Carol C. Greenough, Ph.D., and dated June 23 and June 25, 1982, cautions:

. . .

D.H. admits to being very good at lying and convincing himself as well as others of his lies.

. . .

D.H. is very manipulative, using people and situations to create gratification for himself.

. . .

D.H.'s probation officer, Norm Anderson, told this office, on January 3, 1983, that D.H. thought Bernie Holland was mad at him, thus causing D.H. to be sent to the Johnson Human Services Center for detention purposes on July 14, 1982. D.H. became very upset at the prospect of detention, and that he was going to get back at Bernie Holland. On July 15, 1982, Anderson said, he believed that D.H. was lying.

Since D.H.'s credibility is called into question, corroboration of his statements by the two foster children he named, is important. There was no written statement by M.H. (male). However, Mr. Anderson's memorandum indicates that M.H. can only verify that Bernie Holland used foul language on occasion. Notes prepared by Marlyn Olson say that on July 14, 1982, M.H. (female) a foster child at the Holland home, volunteered information to Mr. Olson. A synopsis of Mr. Olson's notes includes the following incidents, as described by M.H. (female):

- Bernie Holland told her to get out of bed, using vulgar language,
- Mary Holland has called her names,
- M.H. was preparing guacamole, and to quiet J.H., M.H. squirted lemon juice into J.H.'s mouth. Mary Holland cursed at M.H. for this,
- Mary Holland cursed at M.H. for being late when called to the main floor of the house, from the basement, and
- Bernie Holland used coarse language upon M.H.'s return to the Holland home, after having run away from the Holland home.

Mr. Olson's notes for July 15, 1982, include the following:

We [Sonja Brandman, Counselor, and Mr. Olson] discussed M.H.'s (female) behavior over the past three weeks, the fact that it has been very difficult for her having violated curfew, run, caught in several lies, and being on restriction much of the time. Sonja and I agreed that it was difficult to tell when M.H. is being truthful or not.

Shortly thereafter, M.H. (female) provided a handwritten statement of her allegations against the Hollands. M.H.'s statement includes descriptions of the following episodes:

- When M.H. was moving to another room, Mary Holland cursed at her,
- During a family meeting, Mary Holland described M.H.'s performance as a dishwasher, in vulgar terms,
- Mary Holland cursed at M.H. during an incident involving a television,
- Mary Holland, in vulgar terms, told M.H. to be quiet, when M.H. was slow in coming to the main floor of the house from her bedroom,

- When M.H. was making guacamole, one of the Holland children was irritating M.H., so M.H. squirted lemon juice into the child's mouth, and the child started screaming. Mary Holland then cursed at M.H.,

- When M.H. was slow in getting out of bed one morning, Bernie Holland cursed at her to get up,

- Bernie Holland hits D.H. with a stick during family trials and meetings, and

- "When I have my but [sic] up in the air reaching for something and I [have] been hit for no reason twice with [a] stick once with [a] hand and last night befor [sic] he hit me with his hand I caught him first a[nd] said don't hit me what's the reason. he [sic] said boy you [are] lucky I couldn't resist."

Mr. Olson said in his notes of July 15, 1982:

...

I reviewed her statement and found that several of the things she told me yesterday were not addressed and that some of the incidents she wrote about that we talked about yesterday were or somewhat watered down.

...

Most of what she put in writing seemed to be directed towards conflicts that she was having with Mary instances in which she says Mary directed foul [sic] language towards her, telling her to shut up, calling her asshole, etc.

Mr. Olson also reported that M.H.'s (female) mother said M.H. seemed to be using vulgar language, and that the Holland home "...was the best placement for her."

The next day (July 15, 1982) a meeting was held with Mr. Olson, M.H. (female) and her father, Bernie Holland and Ms. Brandman. During this meeting, they reviewed the allegations M.H. had made regarding the Hollands. Mr. Olson noted that M.H. lied when discussing what she did one Sunday. Mr. Olson also wrote:

...

We note that the conflicts she brought up involved she [M.H.] and Mary. I think we have to recognize the fact that there could be a great deal of transference going on here, meaning that a lot of the hostility, the anger, the hurt M.H. feels in her relationship with her mother are under difficult circumstances transferred to Mary, her foster mother.

...

January 28, 1983

Before we closed the meeting and while M.H. was still meeting with us we questioned her in several different ways about whether or not the problems she told us about at the Hollands were so serious that they couldn't be worked out, that perhaps this difficult time will soon pass and once again, things will level out for her. Her response was that things could probably be worked out.

M.H. (female), during a deposition taken on December 30, 1982, told me that she felt that her problems with Mary and Bernie Holland were resolved during the above described meeting.

From records retained by DFYS, staff then gathered statements from the following people:

- D.H. gave a statement on July 22, 1982, and signed it on August 2. D.H. later retracted this statement, in a written statement dated December 1, 1982.

- M.H.(female) gave a statement on July 22, 1982, and signed it on July 29, 1982. An unsigned statement given on July 23, 1982, was also given by M.H.

- K.S. signed a statement on July 29, 1982, which was originally given on July 20, 1982.

- A.J. gave a statement on July 22, 1982, and signed it July, 29, 1982.

- A.M. gave a statement on July 22, 1982, which was later signed on July 29, 1982.

- M.F. gave a statement on July 23, 1982, which was not signed.

- Gil Lucero gave a signed statement on July 28, 1982.

#### Allegations against the Hollands:

Based upon the statements that division personnel had received as of July 23, 1982, DFYS prepared a NOTIFICATION OF COMPLAINT. The notification included a description of 13 allegations against the Hollands. Each of the 13 allegations was reviewed by me to determine if there was adequate factual basis for the allegation, and adequate basis to begin and continue investigation of the allegation.

Since an administrative hearing regarding modification of the Holland foster license is being scheduled in the near future, the truthfulness of the allegations is not a matter within the jurisdiction of this office.

Summarized, the allegations provide as follows:

1. This allegation was that the Hollands "yell and direct vulgar and abusive language towards foster children." DFYS officials cited 7 AAC50.450(2).

Information provided by some of the foster children as of July 23, 1982, indicates this allegation had an adequate factual basis and was properly the subject of investigation.

2. This allegation was "that Bernie Holland frequently hits foster children with a stick, ruler, yardstick and his hands," and was presented with a cite to 7 AAC 50.450(1) and 7 AAC 50.450(5).

Information provided by some of the foster children, as of July 23, 1982, indicates this allegation had an adequate factual basis and was properly the subject of an investigation.

3. It was alleged that "Bernie Holland squirted lemon juice into a resident's mouth, as punishment, and in the process of the resident resisting, used force to open the resident's mouth by holding the jaw and applying pressure." The notification referenced 7 AAC 50.450(1).

Information provided by one foster child, as of July 23, 1982, provided sufficient basis for the allegation, and the matter was properly the subject of an investigation.

4. "Allegation that Bernie and Mary Holland are providing Day Care in their home for from 2-5 children," accompanied by reference to 7 AAC 50.430(b) and 7 AAC 50.430(d). As of July 23, 1982, six different sources reported that day care services were being provided for as many as four children.

The two regulations cited by DFYS provide:

7 AAC 50.430. NUMBER OF FOSTER CHILDREN PERMITTED  
IN THE HOME.

...

(b) No more than eight children in all are permitted in any one home.

...

(d) No more than five children of any age who are unrelated to the foster parents are permitted.

Read together, these two regulations do not appear to have any direct relationship to the issue of day care services. Rather, the regulations seem to describe the maximum number of foster children and other unrelated children a foster home may have (five), and the total number of children, including foster and natural children that may live in a foster home (eight).

Since the allegation mentions day care as well as number of children, DFYS may have been relying on 7 AAC 50.440(a):

(a) Day care of children and commercial care of the aged, or maternity, or convalescent patients may not be combined with foster care of children without prior approval of the division representative.

As of July 23, 1982, there was not sufficient basis for the allegation that the Hollands were providing day care services for up to and including five children. Pat Monroe, Licensing Coordinator, told me that DFYS always requires foster homes to secure a day care license, when day care services are going to be provided, in addition to divisional approval. Since it appears that a day care license is required only if day care services are provided in the home to more than four children, it does not appear that the Hollands would be required by law to secure a day care license. AS 47.35.020(2). In addition, providing day care services in a foster home, per se, does not appear to violate the foster care regulations cited by DFYS.

There is confusion concerning day care licensing obligations within a licensed foster home, and it is not at all clear that, in citing 7 AAC 50.430, the division made the point it had intended. Taking the cite provided as the basis of my review, it does not appear that the allegation has a sufficient basis. The Hollands might have admitted the truth of the allegation but it is far from certain that the admission or the finding will support revocation of the license.

5. The fifth allegation held that there was not sufficient space for foster childrens' personal possessions. As of July 23, 1982, there appeared to be sufficient basis for the allegation, and there appeared to be an adequate amount of information to warrant the investigation of the allegation.

6. Allegation 6 stated that "the Holland children have played with, destroyed, broken or lost the foster childrens['] personal possessions." The notification in which the allegation was contained included a reference to 7 AAC 50.420(e), a provision which states:

(e) The foster parents shall allow the child to bring personal possessions into the foster family home, and allow him to acquire possessions of his or her own, within reason with regard to space and comfort, and safety.

The above cited regulation only directs that personal possessions of foster children may be brought into the home, with certain limitations. That the regulation supports an investigation of the allegation is at best arguable.

7. It was alleged that children of Mr. and Mrs. Holland annoy the foster children, that, when a dispute arises, the foster children are always wrong and the natural children right, and that the foster children are verbally abused. The allegation referred to 7 AAC 50.450(2) and 7 AAC 50.450(5).

The "verbal abuse" portion of this allegation is identical to the one included in allegation number 1 above. The applicable regulation for it appears to be found in 7 AAC 50.450(2).

The other regulation, 7 AAC 50.450(5), states:

7 AAC 50.450. DISCIPLINE.

(5) disciplined by shaking or by delivering a forceful blow with a hand or a weapon, however, controlled hand spankings of one to three slaps on the buttocks are allowed when appropriate;

Allegation 7 appears to be partially redundant with the first allegation. In addition, the second regulation cited, 7 AAC 50.450(5), bears no direct relationship to any part of allegation 7. Accordingly, it is not possible to conclude that the allegation is supported by any part of the regulations cited, and I question whether it ought to have been the basis for subsequent investigation and finding.

8. Citing 7 AAC 50.420, it was alleged that "adult boarders are living in the Holland foster home and that they are sharing sleeping quarters with foster children." The applicable portion of this regulation is part (a):

7 AAC 50.420 RESPONSIBILITIES OF FOSTER PARENTS

(a) The foster parents shall report to the division representative any significant changes in the household such as employment, housing, or serious illness, that would affect the ability to care for foster children.

There was sufficient evidence from foster children that, in addition to Mary and Bernie Holland, other adults may have been living at the home. Although the allegation refers to these adults as "boarders," the regulations cited do not appear to prohibit boarders, and the use of the term is of no impact on the allegation.

The main point of the allegation is that the Hollands failed to notify the DFYS that additional adults were staying at their home. DFYS apparently believes that the addition of the residents is a significant change impairing the ability of the Hollands to properly care for foster children. As the regulation is written, it is not clear who is to determine, for purposes of reporting, what constitutes "a significant change." In this instance, DFYS should have identified the impairment resulting from the additional adults. The failure to provide this in the allegation suggests that the allegation is flawed, and should not have been investigated.

9. This allegation was that "adult boarders participate in the family meetings and trials and are allowed to vote on foster childrens [sic] punishment." 7 AAC 50.410(a) was cited.

Although there appears to be sufficient evidence for this allegation to be included and investigated, the cited regulation does not clearly indicate such activity is improper. The cited regulation, a provision that describes the qualities of a good foster parent, says:

7 AAC 50.410. QUALIFICATIONS OF FOSTER PARENTS AND OTHERS IN THE HOUSEHOLD.

(a) The foster parents must show evidence of being responsible, mature individuals of reputable character who exercise sound judgement and display the capacity to provide good care for children.

If DFYS is concerned about discipline aspects in the Holland home, the applicable regulation seems to be 7 AAC 50.450, which describes standards for discipline.

10. It was alleged that "three foster children and one adult boarder sleep in a bedroom with no windows," citing 7 AAC 50.560(e)(3). This regulation states that each bedroom used by foster children must have a large window exit for emergency use. It does not mention boarders.

Based upon statements from two foster children, there appeared to be sufficient basis for the allegation that foster children were sleeping in a bedroom without a window large enough for emergency use. In addition, there appeared to be enough evidence to warrant investigation of this allegation. The allegation, as prepared by DFYS is poorly stated.

11. It was alleged that family meetings were conducted until late in the evening, and because of the late meetings, foster children were not able to get sufficient sleep, citing 7 AAC 50.410 as authority.

Statements from two foster children indicate there was sufficient basis for this allegation, and that it should have been investigated.

12. The next to the last allegation was that "Bernie Holland has belittled and used cruel and derogatory remarks when describing a foster child to other foster children, and to other persons who have entered the foster home." Reference followed in the notification to 7 AAC 50.450(2), which states:

7 AAC 50.450. DISCIPLINE.

The foster parents must be able to show evidence of ability to work with children without recourse to physical punishment or psychological abuse and must be positive in their approach to discipline. Any discipline or control must be appropriate to the child's age and developmental level, but in no event may a child in care be:

(2) subjected to verbal abuse, derogatory remarks about himself or members of his family, or threats to expel the child from the foster home;

Four foster children gave information which provided the basis for this allegation and the need to investigate it. One of these four foster children indicated the remarks by Mr. Holland were not intentional.

13. The last allegation was "that Bernie Holland patted a female resident on the bottom, grabbed a female resident around the waist and while 'wrestling, grabbed her legs to get a cheap feel.'" The allegation was supported in the notification by reference to 7 AAC 50.410. (Presumably, the agency meant to cite subsection 410(a) in support of this allegation.)

The applicable portion of D.H.'s July 22 written statement, on which this allegation is based, states:

Bernie was sitting on the couch next to M.H.(female) and I was sitting at the table when Bernie and M.H. started wrestling sort of and Bernie was grabbing M.H. around the waste [sic] and her leg's [sic] and it looked more like Bernie was trying to get a cheap feel off her he does this all the time . . .

In the course of my investigation, Robert Danneker told me the quoted portion of this allegation came from D.H. He acknowledged, however, that he had provided the phrase regarding sexual contact to D.H. On July 22, 1982, D.H. provided a second written statement, signed on August 2, 1982, which says in part:

Danneker: Read a quote from written statement regarding Bernie wrestling with M.H.(female)

D.H.: Said that Bernie grabs her from behind under the arms. Stated that he didn't think Bernie should do this. M.H. got up to go somewhere and was bending over to pull down her pants (said she wears tight pants and had to pull them down when she got up). This was when Bernie swatted her (hit her on the bottom).

Danneker: Have you seen him do this with any other girl in the house?

D.H.: No.

Danneker: What was M.H.'s reaction?

D.H.: Walked away. It appeared to be done in fun but....

In addition to the obvious inconsistencies in the two statements provided by D.H., the incorrect quotation provided by Mr. Danneker, and the phrase regarding sexual contact which had been provided by Mr. Danneker, there is the July 15, 1982 written statement of M.H. (female), which says in part:

When I have my but [sic] up in the air reaching for something and I have been hit for no reason twice with [a] stick once with [a] hand and last night before he hit me with his hand I caught him first a[nd] said don't hit me what's the reason. he [sic] said boy you are lucky I couldn't resist.

Read together, the three statements do not seem to accurately describe the same or similar incidents. In addition, M.H. (female) is reported to have had the following conversation with Robert Danneker on July 23, 1982:

Danneker: Have you ever wrestled with Bernie?

M.H.: He likes to tickle us and stuff like this.

Danneker: When he hugs you is it from behind or from the front?

M.H.: Front. It's mostly when I'm feeling down.

Danneker: Is he sexual towards you?

M.H.: No. He told us he'd never do anything like that. If he wanted to bad enough he has a wife.

When asked if the incident she described in her July 15, 1982 statement included any sexual connotation, M.H. (female) told me on December 30, 1982, "not even, Bernie's not that way." Marlyn Olson, told me on January 4, 1983, that when he took the first written statement from M.H. (female) that although there appeared to be physical contact between M.H. and Bernie Holland, it was probably not of a sexual nature. Finally, Robert Danneker told me on January 10, 1983, that, "There's no sexual connotation in there. I am just saying it's inappropriate behavior." Mr. Danneker also said this allegation did not concern any illegal activities.

From the information provided by D.H., M.H. (female), Marlyn Olson, and Robert Danneker, investigation of allegation 13 should have been terminated after preliminary inquiries by DFYS.

Presentation of the allegations to the Hollands:

The NOTIFICATION OF COMPLAINT was given to the Hollands on July 23, 1982, during a home visit by Robert Danneker, and Carolyn Tuovinen, a Community Care Licensing Supervisor. Both Bernie and Mary Holland have

stated to me that Mr. Danneker and Ms. Tuovinen were pushy and rude during the meeting. As an example of this, Mary Holland recalled that "they pushed themselves through the front door." Another example given by the Hollands, was that Mr. Danneker told Bernie Holland, "hey asshole, just answer the allegations." In addition, the Hollands stated that Mr. Danneker and Ms. Tuovinen threatened to remove the foster children if the Hollands refused to answer the allegations.

Both Mr. Danneker and Ms. Tuovinen denied; that they were pushy, that Mr. Danneker used the language described above, and that they threatened to remove the children if the allegations were not answered. However, Ms. Tuovinen did admit there may have been a discussion about removing foster children, but this was not a threat.

Before leaving the Holland home, Ms. Tuovinen and Mr. Danneker examined the sleeping quarters for the foster children. He told the Hollands that children could not sleep in the basement bedroom if it did not have had an adequate fire escape. As reported in DFYS notes, Ms. Tuovinen and Mr. Danneker also told the Hollands DFYS would be in touch. Ms. Tuovinen told me that DFYS hoped to be in touch the same day as the visit (July 23, 1982).

Later that night, at approximately 10:30 p.m. a call was placed by DFYS to the Hollands to tell them that DFYS would be in touch the next day (July 24, 1982) regarding the allegations, and to inquire if the foster children sleeping in the basement bedroom had been moved to an bedroom with an adequate fire escape. Bernie Holland believes this telephone call was a form of harassment, especially considering the time the call was placed.

The following morning (July 24, 1982), Mr. Danneker visited the Holland home to deliver a letter (detailing three of the thirteen allegations, and having the NOTIFICATION OF COMPLAINT and foster care administrative regulations attached) signed by Ms. Tuovinen and Mr. Danneker and dated July 23, 1982. Mr. Holland claims that Mr. Danneker told him. "I've got my ass covered, so I'm not sweating it." Danneker admitted to me on January 10, 1983, that during this visit of July 24, 1982, he did say that to Bernie Holland.

#### Refusal to respond to the allegations:

In a letter dated July 24, 1982, Mr. Holland advised Mr. Danneker that the foster children formerly in the basement bedroom, had been assigned to an upstairs bedroom. Mr. Holland refused to answer the allegations, and encouraged DFYS to investigate the allegations. Mr. Danneker responded to the above correspondence by stating in a letter dated July 27, 1982:

By not responding you have interfered with the Division's authority to supervise and enforce standards allowed by Alaska Statutes 47.35.010, (1) (2) (3) in regard to facilities. Also, by not replying, the Division may be forced to make a

determination of the allegations based solely [sic] on the information gathered by the Division without having your input. If this becomes necessary, it will be done.

I am again requesting that a reply to the allegations be submitted. You and your wife, and/or your legal counsel, are requested to reply within ten (10) days of the date of this letter. I look forward to hearing from you.

A person violating any of the statutes or regulations regarding foster care "is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$200". AS 47.35.070. In light of the criminal penalty, the reluctance of the Hollands to further discuss the 13 allegations appears understandable. Although DFYS presented the 13 allegations as a licensing issue, any information gathered by DFYS through discussions with foster children and or the Hollands could nevertheless provide the basis for a criminal prosecution.

I briefly reviewed the legal basis for a person suspected of violating a licensing law, to refuse to answer questions during the investigation for fear of self-incrimination. A discussion of this issue is found in State of Alaska, Department of Revenue v. Oliver, 636 P.2d 1156(1981), and several other cases. This review leads me to believe there is no clear answer to the question of when a person may invoke the right against self-incrimination during an investigation, particularly when the investigation initially appears to be non-criminal in nature. As to DFYS saying that refusing to answer allegations is interference of an investigation -- such a belief does not appear to be well founded.

Investigation of allegations completed:

On August 17, 1982, Danneker completed his report on the investigation of the 13 allegations. Danneker found that allegations 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, and 13, are valid. He also found that allegation 3 was not substantiated by the evidence and allegation 10 was valid upon inspection, but had since been resolved.

The report included three problems noted during a standard-by-standard inspection of the Holland home during August, 1982. In closing his report Danneker states:

#### EVALUATION AND RECOMMENDATION

All of the above allegations are of a serious nature. Since they were found valid through investigation of the available information, they require immediate correction for the foster home to remain in operation. A serious matter is the Holland's refusal to respond to the allegations. Refusal to respond, either from the Hollands or their legal counsel, has not only interfered with the Division's

authority to supervise and enforce standards for foster care allowed by statute, but also has demonstrated a lack of responsibility on the part of the Hollands and placed those children entrusted to their care at an unacceptable risk level.

The Hollands have repeatedly violated the foster home regulations and have made no attempt to correct some of the violations, or if they have corrected them have failed to inform the Division. Foster parents who are seriously concerned about the welfare of children would normally be willing to cooperate with the Division to resolve any problems of [sic] misunderstandings that may arise. The Hollands have demonstrated a total lack of cooperation with the Division in dealing with the allegations.

It is therefore recommended that the foster home license for Bernie and Mary Holland be revoked.

Though the report determined that "The Hollands have repeatedly violated the foster home regulations...", identification or explanation of these previous violations was not given in the report.

In a letter dated September 27, 1982, Lew Reece, Regional Administrator, DFYS, told the Hollands that the investigation of the 13 allegations had been completed, and, with the exception to allegation 10, the Hollands had failed to respond to the allegations. The letter notes allegations 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, and 13 are valid. Mr. Reece also said that allegation 3 was not supported by the evidence, and that allegation 10 although true at the time of inspection (July 23, 1982), is now not valid since the foster children have been moved. Mr. Reece closes the letter by telling the Hollands:

Given the pattern of violations, and your refusal to respond or to formulate a corrective action plan, the Division is referring your case to the Department of Law for consideration of license modification, license suspension, or revocation. You will be informed of the Department of Law's recommendation to this Department.

Related incident:

Mr. Holland also alleges that the DFYS was harassing him by asking the Troopers to investigate an incident involving him and another foster parent. Mr. Holland believes he was the focus of this investigation, and that the investigation centered on Mr. Holland's alleged obstruction of an investigation conducted by DFYS. The relevant facts on this matter are that Mr. Reece, via a memorandum dated December 10, 1982 to 1st Sgt. John Murphy, requested the Troopers investigate how information (concerning another DFYS investigation) from Reece's office was transmitted to Bernie Holland. Mr. Reece was concerned that a state employee was illegally leaking confidential information.

On December 28, 1982, the Troopers concluded that, "...investigation indicated the information regarding the investigation was passed from #6, M.H. (female), to #4, Holland, who called C. and advised him he was being investigated."

M.H. (female) was the source of the information DFYS was investigating in the other matter. Therefore, one person not a state employee (M.H.) gave the information to another person who was not a state employee (Bernie Holland). Because of this, the final report indicates there was no "leak" from the offices of DFYS. Also, the focus of the investigation was not Holland, rather, it was to determine if there was a state employee leaking confidential information. This has been confirmed by 1st Sgt. Murphy.

FINDING:

As to the allegations that the Division of Family and Youth Services failed to conduct an investigation properly, and is harassing the Hollands, the following problems are noted:

1. The referenced regulations in allegation 4 (7 AAC 50.-430(b),(d)) do not appear to directly relate to the issue of providing day care services in a home licensed for foster care. Therefore this allegation lacks sufficient legal basis and should not have been investigated;

2. Allegation 6 indicates that 7 AAC 50.420 is the applicable regulation regarding destroyed, lost or broken personal possessions of foster children. However, the regulation only addresses the ability of the foster child to bring possessions into the home, not what happens to these possessions after arrival in the foster home. The allegation does not appear to have sufficient legal basis;

3. At best allegation 7 appears to restate the essence of allegation 1 and therefore is redundant, and the second regulation cited, 7 AAC 50.450(5) bears no known relationship to any portion of the allegation;

4. The Division used the word "boarders" in allegation 8, yet the cited regulation does not prevent boarders from living in a home that is licensed for foster care. Rather, the Division seems to be concerned that the Hollands failed to report "any significant changes in the household". The DFYS should have identified any impairment in the care of foster children resulting from additional adults at the Holland home. This allegation lacks sufficient specificity, and should not have been investigated;

5. Regulation 7 AAC 50.410(a), as cited in allegation 9 (that "adult boarders participate in the family meetings and trials and are allowed to vote on foster childrens [sic] punishment") is not directly related to the allegation. The regulation regarding discipline, 7 AAC

50.450, describes the applicable discipline standards, which should have been used to measure conduct against;

6. The Division used the word "boarder" in allegation 10, yet the regulation only talks about fire safety, and does not mention boarders. Therefore, one has to question the reason for using the word, and the allegation is poorly stated;

7. Based upon the information available to the Division as of July 23, 1982, investigation of allegation 13 should have been terminated after preliminary inquiries and the Hollands so notified in the letter given them on July 24, 1982;

8. Robert Danneker used vulgar language when transmitting a letter to Bernie Holland on July 24, 1982.

Of the above noted problems, numbers 1, 2, 3, 4, 5, and 7, appear to constitute harassment of the Hollands.

The secondary allegation, relating to the later investigation undertaken by the Alaska State Troopers initiated by Lew Reece is not supported.

#### J82-1136

Bernie Holland filed a complaint with this office on November 18, 1982, alleging that an official of the DFYS improperly ordered employees not to place children in the Holland home for foster care purposes. In a letter from Lew Reece, Regional Administrator, to Mr. Holland dated December 1, 1982, Reece said:

. . .

On August 25, a certified letter of license non-compliance was sent to you and again you failed to contact us. On September 27, 1982, the investigation was concluded and a copy of the findings was sent to you and the Attorney General's office for further action.

It was only after the investigation was concluded and you had been given approximately 2 months to respond to the Division that I instructed the Juneau District Office to suspend juvenile placements until the alleged licensing violations in your foster home had been resolved.

I would be more than happy to meet with you at your convenience, with our licensing specialist, to assist you in developing a corrective action plan for your foster home. Without this meeting I cannot recind [sic] the instructions I have given the Juneau District Office not to place children in your foster home. [Emphasis added]

At the time of this letter, Holland held a valid foster care license which had not been suspended, modified, denied or revoked.

There is no known regulation which permits the state to "suspend juvenile placements" when "alleged licensing violations" in a foster home holding a valid foster license (which has not been suspended, modified, denied or revoked) have not been resolved to the satisfaction of the Division of Family and Youth Services. State law provides that a foster license may be revoked or modified "if it [the Division] determines that a facility is not in compliance with AS 47.35.010 - 47.35.080 or the regulations adopted under AS 47.35.010 - 47.35.080." AS 47.-35.040(b).

On September 27, 1982, the Hollands were told in a letter from Mr. Reece that several of the allegations were found to be true, yet their license was not modified or revoked at that time. The agency determined the Hollands failed to meet several of the regulations found in 7 AAC 50.310 - 7 AAC 50.620, and because of this the Holland license should have been revoked at that time (see 7 AAC 50.390(a)).

7 AAC 50.390. DENIAL OR REVOCATION.

(a) If the division finds that a foster home does not comply with the provisions of 7 AAC 50.310 - 7 AAC 50.620, or the specific terms of a license which has been issued, it shall deny or revoke the license. [Emphasis added]

In addition to 7 AAC 50.390(a), a statutory provision states the following:

AS 47.35.040. LICENSING.

(e) The department shall give written notice of revocation or modification under (b) of this section 30 days before the effective date of the action. However, if the health or well-being of children or dependent adults is in jeopardy, the revocation or modification action is effective immediately upon the issuance of written notice by the department.

This complaint presents the unusual situation in which the agency has determined the Hollands do not comply with the regulations for foster homes, then their foster home license should have been revoked (per 7 AAC 50.390(a)) and they should have been given 30 days notice of the effective date of the revocation of their license (per AS 47.-35.040(e)). None of this was done. If the Holland's license had been revoked, the agency would not have been able to place children there (See AS 47.35.020).

On this subject, Mr. Reece in a letter to this office, dated January 10, 1983, notes the following regulation:

## 7 AAC 50.360. SCOPE OF LICENSING.

The licensing of a foster home by the division does not create an obligation for the state or any child placement agency to support the foster home financially, nor obligate the state or any child placement agency to place or maintain any child in the home. The issuance of a license means only that the home, the family, the physical environment, and services have been evaluated and determined to meet required standards.

Mr. Reece said in the letter:

Respondents, Bernie and Mary Holland, refused, on numerous occasions [sic], to respond to the allegations against them, made it difficult, if not impossible, for the development of ongoing professional relationships between the Division and the licensed home, a prerequisite to determine compliance with State law.

FINDING:

Based upon the available evidence, the Division of Family and Youth Services acted without the benefit of clear legal authority when it suspended placement of foster children in the Holland home. For reasons discussed in the report of a later complaint, the agency apparently should have acted to revoke the Holland license, a procedure that would have prevented placement of foster children in the Holland home.

Still, the regulation cited above entails no obligation on the part of the Division to place foster children in an approved home. Placement is discretionary with division personnel. Though the division appears to have been in error in basing its decision on the events preceding Mr. Reece's September 27 letter, the decision to direct no further placements in the Holland home until licensing violations were corrected was one that the division could properly make.

J82-1188

A complaint was filed with this office on December 12, 1982, alleging that the Division of Family and Youth Services erred in either determining the Holland foster home was not safe, or in leaving foster children in their unsafe home. This complaint concerns the Hollands' foster home license.

Since the DFYS did not immediately revoke or modify the foster home license as provided by AS 47.35.040(e), when the health or well-being of the children is in jeopardy, division personnel apparently concluded that the violations found during its investigation were not serious. The notice to the Hollands that they were not in compliance was given on September 27, 1982. The Hollands had 14 days to correct the compliance problems (7 AAC 50.370(2)). If at the end of the period corrective

action had not been taken, any foster child would be removed from the foster home.

As of October 28, 1982, the Hollands had not corrected problems identified in the letter to them dated September 27, 1982. In the case at hand, K.S., a foster child, remained at the Holland home until October 28, 1982, which is approximately two weeks beyond the time allowed for either satisfactory corrective action(s), or removal from the home.

FINDING:

Based upon the available evidence, the Division of Family and Youth Services incorrectly left K.S. in the Holland foster home more than 14 days after the agency determined the home failed to meet the applicable standards.

J82-0728

Ombudsman Complaint J82-0728 was filed with this office on August 11, 1982. The complainant, Jan Still, alleged that DFYS wrongfully took a statement from his 14-year-old daughter concerning allegations involving the foster home where she was living. Mr. Still also alleged that his daughter was not able to have an attorney, nor her parents present, during the interview by the DFYS and that the agency refused to give a copy of the statement to him.

The child at the center of this complaint provided a statement during the later part of July, 1982, to the DFYS concerning the investigation of the Holland foster home license by the DFYS. At that time she was under the custody of the DFYS. The child admitted to this office the statement was given voluntarily to the DFYS, and that she was not coerced. She also said that at the time of the interview she did not request either her parents or an attorney be present. Since the subject of the interview was the foster home where she lived and not possible illegal activities on her part, there was no apparent reason for her to have an attorney or her parents present while being interviewed.

Based upon conversations with Linda Scoccia, Assistant Attorney General, Department of Law, and staff at the DFYS, it appears that the child was initially refused access to the written statement given to DFYS. Only after a subsequent consultation with Ms. Scoccia was the statement released. The child refused to give her parents access to the statement at the time she received it from DFYS. Ms. Scoccia also advised that the statement should not be released to Mr. Still because the statement is considered confidential in nature. When I asked Ms. Scoccia if the statement could be released at the time the parents regained full custody of the child, she said no.

The child in this complaint was considered a "child in need of aid" at the time of the request for the statement. The rights of the parents of a child in need of aid are stated under AS 47.10.084(c):

When there has been a transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation, consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 09.65.100, and the responsibility for support, except if by court order any residual right and responsibility has been delegated to a guardian under (b) of this section.

From this statute, it seems the parents may not have had the legal right to examine statements provided by a child when the child is in state custody. I checked with Lt. Roger McCoy, Alaska State Troopers, and inquired as to their procedures in this type of case. Lt. McCoy told me that the Troopers will give a child a copy of a statement taken by the Troopers, as well as to the legal custodian of the child. Also, if the parents of a child do not have custody of the child, a copy of the statement will not be given the parents until they regain legal custody.

The anxiety of the father in not being able to examine the statement provided by his daughter is described in his letter to this office, dated October 4, 1982:

On about August 10th (9-11) I questioned Mr. Danniker [sic] (social worker) who stated that he had obtained the statement from [Still's daughter] and that I could have a copy. I arrived at Mr. Danniker's [sic] office about 10 minutes after talking to him on the phone and was ushered into an office by Mr. Danniker [sic] and Mr. Reese [sic], his supervisor. Mr. Danniker [sic], who seemed excited, then informed me that he had signed statements from 6 children concerning mental, physical and sexual abuse and that he had told [Still's daughter] that she could move out of the Holland foster home anytime she wanted to. Mr. Danniker [sic] also mentioned an after hours meeting at H&SS with [Still's daughter]. He reported that she was visibly shaking as the result of questioning and pressure from Mr. Holland.

FINDING:

Based upon the available evidence, the Division of Family and Youth Services did not wrongfully take a statement from a child while investigating allegations of violations of foster home laws. The child in question did not request to have either an attorney or her parents present when giving the statement, and the investigation was not directed at any possible illegal activities of the child. The agency did refuse to give a copy of the statement to Jan Still, and apparently did so properly. (However, the agency could have handled the request in a more sensitive manner, and if the allegations were in fact serious, the child should have been removed from the foster home immediately, and or the license should have been revoked or modified. (See 7 AAC 50.370 and AS 47.35.040(e)). Also, based upon the procedures of the Troopers, the agency could have given a copy of the statement to Still when legal custody of the child was regained.)

RECOMMENDATIONS:

By way of immediate personal remedy to the complainants in J82-0689, I recommend:

Recommendation 1. The Division of Family and Youth Services should prepare and send a written apology to the Hollands concerning the harassment aspects to these complaints, and the foul language used by Mr. Danneker.

The following recommendations should be made to the Division of Family and Youth Services to prevent recurrence of the problems found during the investigation of these complaints:

Recommendation 2. The Division should state as clearly as possible any allegation regarding a foster home. The allegation should have sufficient basis to be stated, and be directly related to a standard established by statute and/or regulation.

Recommendation 3. The Division should refrain from demanding that a foster home secure a day care license unless and until it is clear that the law so requires.

Recommendation 4. The Division should notify the subject of an investigation, at the earliest opportunity, when investigation of an allegation has terminated because the allegation lacks sufficient legal basis or proof, or is shown to be false.

Recommendation 5. In its revision of its office manual, the Division should examine, with the Department of Law, the issue of self-incrimination by a licensee in the course of a licensing investigation, and prepare and include discussion of this issue in the policy and procedures manual.

Recommendation 6. The Division, with the assistance of the Department of Law, should revise the applicable portions of the policy manual and Alaska Administrative Code to guarantee to persons providing statements to the DFYS a copy of that statement upon request.

Recommendation 7. The Division, with the assistance of the Department of Law, ought to examine the legal basis for denying information retained in DFYS files to the parents and legal custodians of children receiving services from the DFYS. A definitive policy on this matter appears to be in order. The policy adopted ought to be included in the policy manual and Alaska Administrative Code.

Recommendation 8. Division personnel should strive to handle matters as identified in Ombudsman Complaint J82-0728 in a sensitive manner. The Division may wish to consider sending a letter of apology to Mr. Still.

Recommendation 9. The Division should review current policy regarding employee discipline and should, if warranted, consider appropriate disciplinary measures for the employee(s) involved with the harassment matters and the use of vulgar language by one employee.

BA:mm  
Attachment

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF FAMILY AND YOUTH SERVICES

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In the Matter of the	)	
Application for Licensure	)	
as a Residential Child Care	)	
Facility by	)	
B.G. HOLLAND	)	License No. 235005 (Denied)
	)	
Respondent.	)	

RECOMMENDED DECISION

This proceeding involves the issue of whether the Department of Health and Social Services, Division of Family and Youth Services (DHSS) acted properly in denying respondent Bernie G. Holland's application for a license to operate a residential child care facility in Juneau. The proceeding was initiated by the filing of a statement of issues by DHSS on June 15, 1982. On June 25, 1982, respondent submitted his notice of defense, and on August 9, 1982, DHSS filed an amended statement of issues. The hearing briefs were filed and evidence was taken during a hearing held between October 4th and October 7, 1982. At the conclusion of the hearing, respondent presented an oral closing argument and DHSS, by its attorney, and with the approval of the hearing officer and respondent, submitted a written closing argument.

I. FACTS

While there is disagreement among the parties as to the inferences to be drawn from the facts, there appears to be little disagreement as to most of the primary facts. In September of 1981, Mr. Holland submitted an application for a license for a "foster family group home," to be known as "Holland House." Document 66. On November 19, 1981, respondent was notified by Alinio Lobo, licensing specialist at the Southeast Regional Office (SERO) in Juneau, that the office was looking forward to respondent's submission of an "improved final version of the proposal." Document 16.

LAW OFFICES  
**FINDLEY & BURNHAM**  
A PROFESSIONAL CORPORATION  
326 FOURTH STREET, SUITE II  
JUNEAU, ALASKA 99901  
(907) 586-3011

1 On January 12, 1982, respondent submitted to the SERO Office of DHSS at  
2 least two copies of a document entitled "Family Group Home Proposal."  
3 Document 403. That document was intended by respondent to be the  
4 expanded program description requested by SERO in the letter of November  
5 19, 1981. For some inadequately explained reason, SERO had numerous  
6 problems handling the document. The testimony indicated that some of the  
7 recipients of the document at SERO thought it was merely a proposal for a  
8 program being considered by respondent that was unrelated to the September  
9 30, 1981 application for a license. Consequently, at least one of the copies  
10 of the proposal was passed on to the Central Office for informational  
11 purposes only. At least one other copy of the proposal was retained in  
12 respondent's license application file at SERO. At some time between its  
13 submission on January 12, 1982 and June 8, 1982, the proposal disappeared  
14 from respondent's application file. Testimony indicated that this  
15 disappearance was merely an accident in that the document fell out of  
16 respondent's file and into the back of a drawer in a desk at SERO.

17 In April of 1982, Alinio Lobo, the licensing specialist responsible for  
18 reviewing respondent's license application, began a series of on-site visits to  
19 the proposed facility. These visits were in furtherance of the completion of  
20 a standard by standard evaluation of the proposed facility, the satisfactory  
21 completion of which was necessary prior to issuance of a license by DHSS.

22 On May 20, 1982, new regulations for residential child care facilities in  
23 Alaska became effective. This was prior to completion of the standard by  
24 standard evaluation by Mr. Lobo. On June 4, 1982, Ms. Kay Smith,  
25 supervisor of the Southeast Regional Office, reviewed the Facility Information  
26 Summary (CWS 80) presented to her by Mr. Lobo. Document 22. That CWS  
27 80 recommended that respondent be issued a provisional license for the  
28 facility applied for, with the license to run from June 15, 1982 to December  
29 15, 1982. On the same date that she reviewed it, Ms. Smith signed off on  
30 the document. According to the language next to her signature block, her  
31 signature confirmed that she had reviewed the study and that she concurred  
32 that "the facility meets specified requirements." According to the testimony

1 of Ms. Smith and Ms. Connie Hansen of the SERO Office, Ms. Smith left  
2 town that same day and instructed Ms. Hansen to sign the program  
3 evaluation and licensing recommendation for her as soon as the document was  
4 typed. On June 8, 1982, Ms. Hansen in fact did sign the typed version of  
5 the program evaluation and licensing recommendation. Document 41. In that  
6 document, Mr. Lobo recommended that the application submitted by  
7 respondent in September of 1981 be approved and a license issued. By the  
8 signature of the Acting Regional Manager, Ms. Hansen, SERO concurred with  
9 Mr. Lobo's recommended approval. However, Ms. Smith testified that she  
10 actually never read any of the back-up documents supporting the licensing  
11 recommendation. Further, Ms. Hansen testified that she also did not read  
12 any of the back-up documentation and merely signed the document  
13 recommending licensure because Ms. Smith had instructed her to do so.

14 According to the testimony of Mr. Pugh, the licensing for Holland  
15 House came to his attention on June 8, 1982 when Ms. Yvonne Walker  
16 informed him that she had received a monthly report from Ms. Smith which  
17 indicated, among other things, that SERO was in the process of finalizing  
18 the license. According to Mr. Pugh, because he wished to be involved in  
19 the licensing of any new facilities, he met on the afternoon of June 8th with  
20 Yvonne Walker, Pat Monroe, Alinio Lobo and Connie Hansen to discuss  
21 licensing of Holland House. Also according to Mr. Pugh, the licensing file  
22 and proposal of Mr. Holland were brought to him prior to that meeting at his  
23 request. (There appears to be some confusion as to when Mr. Holland's file  
24 actually was brought to Central Office for Ms. Hansen testified the file was  
25 brought to Central Office on June 9th.) On that same day, at Mr. Pugh's  
26 request, Ms. Monroe and Ms. Walker searched for and located the license  
27 which was about to be issued for Holland House, and that license was  
28 thereafter held in abeyance pending a complete review of the licensing file  
29 by Central Office.

30 At the June 8th meeting it was discovered that the file did not contain  
31 a completed standard by standard evaluation. Mr. Pugh therefore asked Ms.  
32 Monroe to review the file and determine whether the facility complied with

1 the new regulations for residential child care facilities which became effective  
2 on May 20, 1982. Ms. Monroe completed her review and reported back to  
3 Mr. Pugh on June 9th. Her conclusion, concurred in by Mr. Pugh, was  
4 that the proposed facility was not in compliance with the new regulations and  
5 that the license should not be issued until the facility was brought into  
6 compliance.

7 Mr. Holland was called into the Central Office for a meeting on the  
8 morning of June 10th, at which time Mr. Pugh and Ms. Monroe informed Mr.  
9 Holland that they could not issue a license for Holland House at that point  
10 because it was not in compliance with the new regulations. That same day  
11 Ms. Monroe informed him that she would be willing to work with him and  
12 assist in bringing his facility and application into compliance with the  
13 regulations. After a meeting with Ms. Monroe at which she began to explain  
14 what Mr. Holland would have to do before DHSS could issue Holland House a  
15 license, Mr. Holland indicated he would have to think about it. A few days  
16 later he called Ms. Monroe and requested that DHSS grant or deny his  
17 application. Central Office complied with that request and the license  
18 application for Holland House was denied. By letter of June 15, 1982, Mr.  
19 Holland was informed of the denial and presented with a statement of issues  
20 setting forth the reasons for the denial.

21 At some time after Alinio Lobo's return to Juneau on June 14, 1982,  
22 there appeared a completed standard by standard evaluation for the Holland  
23 House facility. Testimony as to when this document had been completed was  
24 contradictory. It was the testimony of Ms. Monroe and Mr. Pugh that the  
25 document was not in the file as of June 9, 1982 and that the only standard  
26 by standard evaluation in the file at that time was far from complete. They  
27 also testified that Mr. Lobo had stated on June 8th that he was still working  
28 on the standard by standard evaluation. Mr. Lobo, however, testified that  
29 he had completed the standard by standard evaluation and placed it in the  
30 file on or before June 8, 1982.

31 In August of 1982, Mr. Holland and Mr. Botelho met with me to discuss  
32 procedures to be followed in bringing this case to a hearing. At that time

1 Mr. Botelho indicated that it was the position of DHSS that no complete  
2 standard by standard evaluation assessing the facility's compliance with the  
3 new residential child care facility regulations had been done for the facility,  
4 and that that in itself was sufficient to justify denial of the license  
5 application. It having been my view that it made little sense to go through  
6 a long and costly hearing in this case only to reach the conclusion that the  
7 license could be denied because a standard by standard evaluation had not  
8 been done, I recommended to Mr. Holland that he allow DHSS to conduct a  
9 new standard by standard evaluation of his facility. Mr. Holland agreed.  
10 At Mr. Holland's request, Ms. Laurie Vaughn of the Fairbanks Regional  
11 Office of DHSS performed the standard by standard evaluation. Her  
12 conclusion was that the facility was not in compliance with the May 20, 1982  
13 residential child care facility regulations and that the license should not be  
14 issued. Document 183.

15 At some time in August, the "proposal" submitted to SERO by Mr.  
16 Holland on January 12, 1982, which, inexplicably, had not found its way to  
17 Mr. Holland's licensing file, was brought to the attention of DHSS.  
18 According to the testimony of Ms. Hansen, she had seen the document  
19 sometime prior to May of 1982, but for some unknown reason, had not  
20 considered it part of Mr. Holland's application. She became aware sometime  
21 during the summer of 1982 that the document was not in Mr. Holland's  
22 licensing file, and she ultimately obtained a copy of it by driving out to Mr.  
23 Lobo's home. Evidently, the copy so obtained was an extra copy Mr. Lobo  
24 had for his personal use for he testified that there were two other copies  
25 which he had placed in Mr. Holland's licensing file. Mr. Lobo was certain  
26 that he had placed those two copies in the file, clipping one of them into the  
27 file and placing the other one loosely in the file. According to the  
28 testimony, a couple of days after obtaining the document from Mr. Lobo at  
29 his home, another copy was found in the back of a drawer in Ms. Hansen's  
30 desk at SERO. The explanation given by Ms. Smith for this occurrence was  
31 that Ms. Hansen has a very messy desk and that the document had plastic  
32 covers and must have slipped out of the file and into the back of Ms.

1 Hansen's desk drawer. According to Ms. Hansen, she had discussed this  
2 document with Ms. Smith sometime prior to May of 1982.

3 Upon discovery of the group home proposal of January 12, 1982, a copy  
4 of the document was sent to Ms. Vaughn for her assessment to determine  
5 whether the document changed the conclusion she had reached in her  
6 standard by standard evaluation. She then assessed the Holland House  
7 application in view of the new document. Her conclusion, however, remained  
8 that the Holland House did not satisfactorily meet the new residential child  
9 care facility regulations and that the license should be denied.

#### 11 CONCLUSIONS OF LAW

12 Each of the parties argues that the other bears the burden of proof in  
13 this proceeding. Mr. Holland has cited no support for his assertion. The  
14 State has cited Fields v. Kodiak City Counsel, 628 P.2d 927 (Alaska 1981);  
15 Thornton v. Commissioner of Department of Labor and Industry, 621 P.2d  
16 062 (Montana 1980), and Country Club Home, Inc. v. Harder, 620 P.2d 1140  
17 (Kansas 1980). None of these cases is instructive on the point. In Fields,  
18 the court applied the standard rule that one seeking a variance to zoning  
19 requirements has the burden of proof, and the ordinance at issue specifically  
20 set forth what one seeking a variance was required to show to be  
21 successful. In Thornton and Country Club Home, Inc., the courts were  
22 reviewing a final order emanating from an administrative hearing, and in  
23 each case the court concluded that the order was presumed to be correct  
24 and the burden was on the one challenging the order. In the case at bar,  
25 we are not dealing with a final order of an agency following a hearing.  
26 Instead, we are trying to derive that order.

27 A case which Mr. Holland might have cited in support of his position is  
28 that of Alaska Alcoholic Beverage Control Board v. Malcolm, Inc., 391 P.2nd  
29 441 (Alaska 1964). There, the court concluded that since under the  
30 Administrative Procedure Act the party filing a statement of Issues is the  
31 moving party and the party seeking the issuance or re-newal of a license is  
32 the respondent, the party filing the statement of Issues bears the burden of

1 proof on the issues raised therein.

2 In my view, none of the above authorities are very helpful. It is my  
3 conclusion that in this case, DHSS has the burden of presenting a prima  
4 facie case in support of the claims set forth in the statement of issues.  
5 Once it has done so, the burden of proof falls upon Mr. Holland to prove by  
6 a preponderance of the evidence that the requested license should be issued.  
7 See Mezones, Stein & Gruff, 4 Administrative Law, § 24.02 (1982). This  
8 approach seems to me to give proper recognition to both the fact that DHSS  
9 cannot arbitrarily refuse to issue a license on the one hand, while on the  
10 other hand, given the importance of DHSS' licensing function in protecting  
11 society, a presumption of some magnitude in favor of the State's licensing  
12 decision should apply.

13 The arguments of Mr. Holland in support of his case appeared to be as  
14 follows. First, because of an incident at his home and his subsequent  
15 complaint to the Ombudsman, as well as a number of rumors at the SERO  
16 Office concerning occurrences at Mr. Holland's facility, DHSS intended to  
17 deny Mr. Holland's application regardless of whether his proposed facility  
18 complied with applicable regulations. In support of this part of his  
19 argument, Ms. Borkowski testified that Ms. Smith had stated, upon  
20 reviewing the January 12, 1982 proposal, that Mr. Holland would be licensed  
21 over her dead body. Furthermore, Ms. Borkowski testified that Ms. Smith  
22 had indicated that she was dissatisfied because of Mr. Holland's complaint to  
23 the Ombudsman and that he was essentially a troublemaker.

24 With the foregoing premise established, Mr. Holland proceeded to argue  
25 that someone in DHSS had removed the completed standard by standard  
26 evaluation performed by Mr. Lobo and the January 12, 1982 Group Home  
27 Proposal from his licensing file for the purpose of assuring that the  
28 application would be denied. In response to the fact that DHSS' denial of  
29 the license was maintained even after review of those two documents, Mr.  
30 Holland argued that the deficiencies which remained in his application were  
31 rather minor, DHSS had the authority to waive adherence to those provisions  
32 with which Mr. Holland had not complied, and DHSS had exercised that

1 discretion in approving the applications of certain other facilities. In Mr.  
2 Holland's view, DHSS should have issued him a provisional license for his  
3 new facility allowing him a reasonable amount of time within which to bring  
4 his facility into compliance with those portions of the new residential child  
5 care facility regulations with which he had not yet complied.

6 The position of DHSS was that, notwithstanding all that occurred prior  
7 to August of 1982, once all of the proper documents were in Mr. Holland's  
8 file and a standard by standard evaluation was performed, his facility was  
9 found not to be in compliance with the new residential child care facility  
10 regulations, and therefore the denial of the license application was proper.  
11 While provisional licenses have been issued in the past, DHSS' position is  
12 that given recent amendments to AS 47.35.055, a provisional license is only  
13 appropriate for on-going facilities, not for new facilities, the difference  
14 being that denial of a license to an existing facility would cause great  
15 hardship for the residents of that facility because it would require closing  
16 the facility, while any delay in starting a new facility would not have such  
17 an affect. According to DHSS, a waiver of regulation requirements could  
18 only be given in certain cases, and then only if an applicant applied in  
19 writing for a waiver. In those cases in which field workers addressing  
20 other facilities exercised discretion and did not require that certain  
21 documents called for in the regulations be submitted with a facility's  
22 application, the field workers were not complying with the policies of DHSS.  
23 I find the argument of DHSS to be persuasive.

24 No person may operate a residential facility without first obtaining a  
25 license to do so from DHSS. AS 47.35.020; 7 AAC 50.003. To obtain a  
26 license for a new residential child care facility, an applicant must satisfy the  
27 requirements of 7 AAC 50.001 - 7 AAC 50.073. AS 47.35.040. A facility in  
28 operation at the time new regulations are passed may continue in operation  
29 despite not being in compliance with some of the new regulations if it  
30 submits an acceptable plan of correction for those items of the regulations  
31 with which it is not in compliance. A new facility may not begin operation  
32 until it has satisfied all of the applicable regulations. 7 AAC 50.05(a)(2).

1 DHSS is required to issue a provisional license to a new facility "if the  
2 facility submits to the Department an acceptable plan for operation that is in  
3 conformity with" applicable statutes and regulations. AS 47.35.055(a); 7  
4 AAC 50.013. Under that statute and regulation, a new facility which does  
5 not meet all of the regulatory requirements is not entitled to a provisional  
6 license. While under 7 AAC 50.023 DHSS possesses the authority to waive  
7 certain of the regulatory requirements under certain conditions, an applicant  
8 desiring a waiver must make application therefor to DHSS in writing.

9 The facility for which Mr. Holland is seeking a license is a new facility,  
10 and he is therefore required to satisfy all of the regulations applicable to  
11 residential child care facilities. He is not entitled to a provisional license  
12 while he is bringing his facility into compliance with the regulations. He is  
13 also not entitled to a waiver of any of the regulations for he did not apply  
14 to DHSS in writing for any such waivers.

15 A number of witnesses testified that one reason for denying Mr.  
16 Holland's license application was that DHSS did not recognize a category of  
17 provider called a foster family group home. This reason for denial,  
18 however, was not included in the amended statement of issues in support of  
19 denial of the license. Furthermore, it appears that DHSS construed the  
20 application of Mr. Holland to be for a residential child care facility and  
21 evaluated the facility using residential child care facility regulations. For  
22 these reasons, this recommended decision will not address the question of  
23 whether the absence of a category of care provider specifically matching the  
24 title set forth in Mr. Holland's application would, in itself, justify denial of  
25 his application.

26 Turning to the reasons for denial set forth in the first amended  
27 statement of issues, DHSS has met its burden of making a prima facie  
28 showing that the inadequacies set forth therein did in fact exist. Mr.  
29 Holland put on no evidence to the contrary. He also failed to present  
30 evidence showing that a provisional license had been provided for any other  
31 new residential child care facility in Alaska which had failed to satisfy those  
32 regulations set forth in the first amended statement of issues. Furthermore,

1 he failed to put on any evidence tending to show that any other new  
2 residential child care facility in Alaska had obtained a waiver of any  
3 regulatory requirements without submitting a written waiver request.  
4 Consequently, Mr. Holland failed to prove that the denial of his license was  
5 arbitrary or capricious, or that he was treated differently than other  
6 applicants in a similar situation.

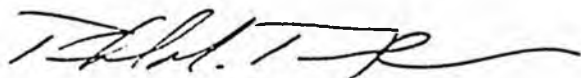
7 While Mr. Holland may consider some or all of the deficiencies in his  
8 application identified by DHSS to be of minor significance, I do not intend to  
9 pass judgment on either the wisdom or importance of the regulations he  
10 failed to satisfy. DHSS is clearly authorized by law to set forth by  
11 regulation standards with which care providers in this state must comply and  
12 Mr. Holland has not challenged that authority. Mr. Holland having failed to  
13 satisfy those standards, I recommend that the denial of his application be  
14 upheld. DHSS, at least as of June 10, 1982, appeared willing to assist Mr.  
15 Holland in bringing his facility into compliance with the regulations. Mr.  
16 Holland chose not to follow this route, and instead demanded that DHSS take  
17 action on his license, notwithstanding that it certainly should have been  
18 clear to Mr. Holland that the only action DHSS could take at the time was to  
19 deny his license.

20 Though I recommend that the license denial be upheld, something must  
21 be said of DHSS' very poor handling of Mr. Holland's application. Were the  
22 results not so costly to the State in time and money, and to Mr. Holland  
23 both in time and emotional distress, one could refer to the handling of his  
24 application as a comedy of errors. The application was submitted by Mr.  
25 Holland in September of 1981 and yet no decision was made on the license  
26 until June of 1982. Furthermore, the amended version of his group home  
27 proposal which SERO had specifically requested in November of 1981, upon  
28 receipt by SERO, was not even recognized as being related to his  
29 application, notwithstanding the fact that the document bore the exact same  
30 title and appearance as did the plan attached to his original application.  
31 SERO then evidently lost the document. When SERO finally got around to  
32 considering Mr. Holland's application, the Regional Director recommended

1 that it be approved, without even reviewing any of the documentation in  
2 support of the license. The Acting Regional Director then signed the  
3 approval recommendation, also without reviewing any back-up documentation.  
4 As it turns out, the kind of facility for which Mr. Holland was applying, and  
5 for which SERO recommended licensure, did not even exist in DHSS  
6 regulations.

7 Mr. Holland assigns sinister purposes to all of these events and  
8 interprets them in some manner to be a conspiracy against issuance of his  
9 license. I do not agree with that conclusion. While Mr. Holland argued that  
10 SERO was dead set against issuing him a license, it was in fact SERO which  
11 recommended issuance of the license. It appears that all of the events to  
12 which Mr. Holland pointed as evidence of a sinister conspiracy were evidence  
13 of nothing more than a very poor performance by the employees at SERO.  
14 Had the license application been properly handled, it is doubtful this matter  
15 would have ever gone to a hearing, and a care provider who has provided  
16 high quality services for the State in the past would not be so disillusioned  
17 with continuing to serve the State in the future. It would seem to be most  
18 beneficial for the State to make every reasonable effort to assist quality care  
19 providers in continuing to provide services on behalf of the State. Sadly,  
20 no such effort appears to have been made in this case until it was too late.

21  
22 DATED this 3rd day of December, 1982.

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25 Richard M. Burnham  
26 Hearing Officer  
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