

risk, and/or no more than 2 core rule categories of "Medium" risk, or 1 "Medium" and 1 "High" risk. (Respondent Exhibit 1).

Incident on August 22, 2013

3. Shortly, before 8:00 a.m. on August 22, 2013, DH, a parent, dropped off SH, her 2-year old child, with GK at GK's facility that is located at GK's home. DH was at the facility briefly before leaving. GK became upset because she had a doctor's appointment at 8:30 a.m. and Alaina, her only helper, had not arrived on time even though GK had informed her of the appointment. She called Alaina at 8:15 a.m. without response and then texted her at 8:17 a.m. with a message to the effect "did you forget my appointment is at 8:30?" GK attempted to call Alaina's grandmother and successfully contacted Alaina's aunt in an attempt to locate Alaina. At approximately 8:20 a.m. she called DH and informed her that Alaina had not arrived and that GK had a doctor's appointment. Shortly after that call, Alaina arrived. At 8:25 a.m., GK again called DH to inform her that Alaina had arrived. (Testimony of DH; Testimony of GK; Respondent Exhibit 3).

4. Upon Alaina's arrival, GK told Alaina that she was fired; that Alaina could call Alaina's mother to pick her up and let GK know when; and that in the meantime, GK would be at her doctor's appointment and would talk to her later. GK left and at 8:35 a.m., she received a text that she disregarded while driving. GK signed in at her doctor's appointment at 8:53 a.m. and then viewed the text which was from Alaina who indicated that SH, a 2-year old, was alone and that GK should turn around and go home.¹ (Testimony of GK; Respondent Exhibit 3).

5. Rather than immediately returning home, GK first received a call from a parent and then attempted to call two of Alaina's relatives to confirm that Alaina was actually gone. She then hysterically contacted DH, SH's mother, at 9:02 a.m. DH immediately rushed to GK's facility.² Upon DH's arrival sometime between 9:15 a.m. and 9:30 a.m., she entered and found SH alone in the kitchen unharmed. At the time, SH was trying to get food from a counter. There was no one else at the facility and both the main door and a glass door were open. After finding SH, DH called GK to report her arrival and to inquire what GK intended to do. As DH waited with SH for GK to return, other children arrived. Although at least one other child remained with her child, others were left with DH and the other parent, neither of whom were employees of the facility. GK completed her doctor's appointment and returned to the facility sometime between 10:30 a.m. and 11:00 a.m. (Testimony of GK; Testimony of DH; Respondent Exhibit 3).

6. Upon GK's return, DH was angry and asked GK what she planned to do. GK told her that she would report it to her BFTS monitor as required but did not mention that DH was filing a police

¹ GK's subsequent statement in a letter dated December 10, 2013, regarding the text is inconsistent with her report to the complaint investigator on August 27, 2013, inasmuch as she indicates she did not see that she had a text message until she was signing in at the doctor's office rather than that she acknowledge receiving a text at 8:35 a.m. but did not look or respond to it at that time since she was driving. (Petitioner Exhibit 1; Respondent Exhibit 3).

² Without corroborative testimony or evidence, GK testified that her blood pressure was elevated and that medical personnel at the doctor's office had instructed her to remain seated until her blood pressure had come down. GK did not report this allegation to DH upon her return to the facility or to the BFTS complaint investigator at any time during the course of the investigation. (Testimony of GK; Testimony of DH; Testimony of Kimberly Mitchell).

report. DH insisted on filing a police report. She did so at approximately 11:20 a.m. No criminal prosecution of Alaina for leaving SH alone without supervision has yet been reported. (Testimony of GK; Testimony of DH).

Report of August 22 incident and initiation of Complaint Investigation

7. Upon receiving a complaint on August 26, 2013 that a 2-year old child had been left unattended at GK's facility, BFTS initiated a complaint investigation. The investigation was assigned to Kimberly Mitchell, a child care consultant in BFTS's complaint department. Ms. Mitchell began her investigation on August 27, 2013 by going to the facility and interviewing GK. Inasmuch as DH immediately withdrew SH following the August 22 incident, Ms. Mitchell interviewed DH by telephone. Ms. Mitchell concluded that the allegation that a 2-year old child was left alone at GK's facility for approximately one hour on August 22, 2013 was substantiated.³ (Testimony of Kimberly Mitchell; Respondent Exhibit 2).

8. If a facility violates a medium risk rule and a high risk rule within the course of two visits in a fiscal year, the facility is determined to be not compliant. Accordingly, coupling the medium risk violations on July 29, 2013 of 290-2-3-.19 SIDS and 290-2-3-.04(2) Restricted Registration with the serious violation of 290-2-3-.07(7) Supervision, GK's facility became non compliant for FY 2014 (July 1, 2013 through June 30, 2014) when Ms. Mitchell substantiated the complaint allegation. (Testimony of Kimberly Mitchell; Respondent Exhibit 1).

9. Due to the seriousness of the violation, Ms. Mitchell's supervisor referred the matter to BFTS legal staff for legal review and recommendation to the BFTS Director. On December 9, 2013, Diedra Bolden, Child Care Services Director of Program Operations, issued a notice of revocation to GK citing the serious violation of Rule 290-2-3-.07 (7) that requires children be supervised at all times. The failure to provide adequate supervision and watchful oversight possibly places children at risk of harm. (Respondent Exhibit 2).

10. GK filed an appeal on December 10, 2013, that does not refute that a child was left unsupervised on August 22, 2013. (Petitioner Exhibit 1).

III. Conclusions of Law

1. Family Day Care Providers are subject to the BFTS's rules and regulations. O.C.G.A. § 20-1A-1. These rules are known as the Rules and Regulations for Family Day Care Homes. Ga. Comp. R. & Regs. 290-2-3-.01. Any Family Day Care Provider that violates rules or regulations may be subject to several sanctions that include public reprimand, suspension, and revocation. O.C.G.A. § 20-1A-12 (b) and (c) (2013). In pertinent part, these sanctions may be imposed upon a finding that the holder of a license has failed to comply with the licensing requirements of this state. O.C.G.A. § 20-1A-12 (b) (1), (3) and (5) (2013).

³ Ms. Mitchell incorrectly reported the incident date as August 21, 2013; however, the record otherwise clearly indicates that the date of the incident was August 22, 2013. (Record as a whole).

2. In taking any of the actions enumerated in this subsection, the department shall consider the seriousness of the violation, including the circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public. O.C.G.A. § 20-1A-12 (c) (2013). The seriousness of the sanction sought is underscored in the cover letter that cites the incident on August 22, 2013, that is also reference in specific rule violation that is enumerated.

3. At least one adult shall supervise children at all times. Ga. Comp. R. & Regs 290-2-3-.07 (7). This did not occur inasmuch as SH was left alone and unattended at risk of harm for at least 40 minutes. Knowing that she had fired her only attendant, GK left the facility and failed to stop and acknowledge a text message from her attendant indicating that the attendant was leaving the child alone at the facility within minutes of GK's departure for a non-emergency doctor's visit. Upon learning of the child's abandonment by the attendant, GK did not immediately call the child's mother or the police or other emergency responders who could have perhaps arrived sooner. GK elected to first attempt to contact the attendant's relatives to confirm her actual departure even though she had fired the attendant and the attendant's text message was clear. Upon contacting the child's mother, GK remained at the doctor's office until the child's mother confirmed her arrival. GK completed her doctor's appointment and did not arrive back at the facility until sometime between 10:30 a.m. and 11:00 a.m. The child was without supervision at least the 40 minutes determined by BFTS. Further rule violations could have easily been determined inasmuch as the child's mother and the other mother who arrived were not employees of the facility and were not authorized by BFTS to act as child care providers.

4. BFTS has shown by a preponderance of the evidence presented that GK has violated a rule that placed a child at risk of serious harm. Ga. Comp. R. & Regs. 616-1-2-.07 (1). The severity of the violation reasonably supports BFTS's decision to revoke GK's permit to operate a Family Day Care Home. GK has failed to present any evidence that rebuts the basis for BFTS's adverse action.

IV. Decision

All adverse findings are substantiated and BFTS's determination that GK's Family Day Care Home license be revoked is **AFFIRMED**.

SO ORDERED, this 14th day of February 2014.

Steven W. Teate
Administrative Law Judge