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**[In re Bacud](#), 99 CDSS 01. Sexual relationship between facility personnel and a consenting adult client in care constitutes a breach of the fiduciary relationship between a caregiver in a position of trust and the client.**

Respondent's licenses to operate two adult residential facilities were revoked based on findings that the respondent had a sexual relationship with a mentally ill client. [H&S 1550(c)] The department held that such a relationship is extremely destructive to a resident and cannot be allowed to happen again. The department also determined that, although respondent was very remorseful, it would be against the interest of the public to allow respondent to hold the trusted position of a licensee. The department stated that respondent's conduct reflected a failure to consider his duty as a care provider or the best interests of the client, thus constituting "conduct inimical."

The department also found that respondent violated the regulations by failing to: furnish toiletries and maintain hot water at safe temperatures [H&S 1550(a) and (b), Regs. 80088, 85088]; maintain medical logs, provide proper medical/dental care for a client, and hire competent staff who could properly manage medications [H&S 1550(a), Regs. 80065, 85065]; furnish window screens and keep toxic materials secured [H&S 1550(a) and (b), Regs. 80087, 85087]; and maintain client records [H&S 1550(a) and (b), Regs. 80070, 85070]; and that cause existed to revoke the license based upon each of the violations.

**[In re Bailey](#), 99 CDSS 02. History of repeated regulatory violations including lack of proper care and supervision evidences a disregard for the legal requirements of licensure and an inability to strictly adhere to the regulations.**

Respondent's license to operate a large family day care home was revoked based on a finding that she repeatedly operated over her licensed capacity and left children without adult supervision. [H&S 1596.885, Regs. 102402 (formerly 102393), 102416.5, 102417(a)] The department held that although respondent maintained a very nice and clean facility, she committed serious violations, had been warned or cited, and then committed the same or similar violations. The department determined that respondent's assertions of future compliance could not be given full faith. Respondent also violated children's personal rights by leaving infants unattended in car seats and leaving children in the care of a minor. [H&S 1596.885, Regs. 102423(a)(2)] Each violation committed by respondent justified revoking her license. The license was revoked based upon each individual violation as well as upon the violations jointly.

[In re Berset](#), 99 CDSS 03. **Persons with a history of substance abuse are unfit for employment in Department licensed facilities; the health and safety of clients is dependent upon employees exercising skills such as self-control and good judgment.**

Respondent had a series of drug related convictions and other misconduct continuing through 1993. The department excluded respondent in 1997, based on the determination that his convictions and past conduct were inimical to clients in care and the people of this State. [H&S 1558(a)(2) and (4)]. The department held that individuals with substance abuse problems are not fit for employment in facilities housing children or dependent adults. The department explained that: "An employee of such a facility must exercise patience, self control, discretion and good judgment at all times. The health and safety of facility residents is dependent upon employees exercising these skills. . . . [T]hose under the influence of intoxicating substances are unable to exercise these skills."

[In re Biggers, et al.](#) 99 CDSS 04. **Licensee's knowledge that a client has been sexually abused while in care and failure to report the abuse to the Department violates the personal rights of the client.**

Respondents, who were mother and daughter, held a license to operate an adult residential facility. The department revoked their license based on the finding that a third respondent (the son and brother of the licensees) had regular sexual relations with a young developmentally disabled adult female client over a of six year period. [H&S 1550] Respondent son was an employee at the facility and impregnated the client twice. Respondent licensees were aware of his conduct and failed both to protect the resident's personal rights [Regs. 80072] and to provide the level of care and supervision appropriate for the resident victim [Regs. 80078(a), 85078]. The department also excluded respondent son from all licensed facilities. [H&S 1558, Regs. 80072]

The department also held that respondent licensees violated the regulations when they failed to: report to the department the son's sexual relationship with a client and the two pregnancies [Regs. 80061(b)(1)(C)]; report the two pregnancies to the client's physician [Regs. 85075.3]; and submit fingerprints for the respondent son [H&S 1522, Regs. 80019]. Finally, respondents' conduct was inimical to the health, morals, welfare, or safety of residents in care and the people of the State of California. [H&S 1550(c)] ]

[In re Blanco](#), **10 CDSS 01. Foster mother’s emotionally and verbally abusive treatment of foster children runs counter to her responsibility to treat the troubled children in her care with patience and kindness.**

Respondent’s license to operate a foster family home was revoked based on findings that: (1) she pushed a developmentally delayed foster child, and pulled her hair and grabbed her when the child disobeyed instructions; (2) over an eleven-month period, when the Respondent became upset with the foster child, she would call her in a loud, angry voice by racial epithets, and tell her she was “stupid” and that she was “hyper;” (3) Respondent called the foster child a “liar” and a “thief,” and pointed her finger in the child’s face and called her belongings “junk;” (4) Respondent asked two other foster children to help drag another foster child with attention deficit hyperactivity disorder or throw her into her room when she misbehaved; (5) Respondent also called this child by racial epithets over an eleven-month period, and called her “slow,” and “stupid,” and told her she was “worth nothing.” The Department held that this conduct breached Respondent’s obligation to ensure that her foster children were accorded all their personal rights to be treated with respect and to be free from emotional abuse, intimidation or harassment based on national origin, and disability, and to be free from humiliation, ridicule, mental abuse, or punitive actions [Regs. 80072(a)(2) and (g); 89372(c)(2), (3) and (4)], and to provide care and supervision to meet the foster children’s needs [Reg. 80078(a)]. The Department held that Respondent’s conduct constituted conduct inimical to the health, morals, welfare or safety of foster children in her care or to the people of the State of California under Health and Safety Code section 1550(c).

[In re Catalina M.](#), **10 CDSS 05. Licensee/parent’s measures to exclude her child from his own home following his sexual abuse of a child in care do not provide an adequate solution.**

The Department revoked Respondent’s family child care home license, based upon its findings that Respondent failed to provide safe accommodations when she permitted two children in her care to engage in or threaten sexual activity in the facility, and that Respondent failed to supervise the children, resulting in one child being subjected to conduct inimical to the health, morals, welfare, and safety of individuals receiving services. [H&S 1596.885(a), (b) and (c); Reg. 102423(a)(2)] Respondent’s plan to keep her minor son away from the facility during day care hours is not an adequate solution as the minor son will remain at home during school holidays, summer breaks and periods of illness. Since the safety of children in Respondent’s care cannot reasonably be assured, revocation of the license was necessary to ensure no further violations of the statute.

**In re DeSomers, 99 CDSS 06. Employee with a drug and alcohol addiction who is still on probation has not been clean and sober long enough to prove substantial rehabilitation.**

Respondent requested an exemption for a criminal conviction in order to accept employment at an RCFE as a nursing assistant. Respondent had a misdemeanor child endangerment conviction in 1996 which involved drug and alcohol addiction. Respondent began AA & NA programs after her conviction. At the time of the hearing, respondent had been clean and sober for 11 months but was still on probation. Respondent did not disclose her conviction when completing her criminal record statement.

The department excluded respondent from all licensed facilities and denied her exemption request, holding that: respondent's conduct leading to her conviction was inimical to the health, morals, welfare and safety of the people of this state; and insufficient time had elapsed, since she had become clean and sober, to indicate substantial rehabilitation. [H&S 1569.58(a)(3), 1569.17(c), Regs. 87219]

**In re Eckard, 99 CDSS 08. Husband's history of sexual misconduct and other inappropriate behavior warrants revocation of wife's license due to his presence in the facility.**

Respondent held a license to operate a large family day care home when she married R. Champion in 1996. Champion frequently assisted respondent with certain some day care activities while living at respondent's facility. The department revoked respondent's license upon finding that: (1) in 1984, Champion undressed and got into a shower while a 14 year old was showering (she ran out and locked herself in another room); (2) in 1984, Champion got into bed with the same 14 year old and said he wanted her; (3) in 1979-1980, Champion engaged in four or five oral sex acts with an 8 year old child; and (4) in 1993, Champion struck his then wife in the face and broke the windshield of his car in anger. There was no allegation that Champion acted inappropriately with children in care or during day care hours.

Based on Champion's past conduct, the department held that his presence at the facility would create a potential risk to the safety and well being of the children in care. The department concluded that respondent's continued licensure would be inimical to the health, morals, welfare and safety of children receiving services and of the people of this state. [H&S 1596.885(c)]

[In re Ellis](#), **99 CDSS 09. Licensee's failure to submit husband's fingerprints and to notify licensing agency of his presence in the facility knowing he has a criminal record places children in care at the facility at risk.**

Respondent had provided foster care in her home since 1986 and enjoyed good reputation in her community. In September 1995 respondent married S. Royston and he resided at the facility through the following December. Royston had a 1994 felony conviction for gross vehicular manslaughter while intoxicated. He had been sentenced to five years probation, and was required to undergo both therapy for alcohol abuse and counseling for anger management. Respondent was aware of Royston's conviction when he moved into the facility.

The department revoked respondent's license based on her: failure to submit Royston's fingerprints for a criminal record clearance; failure to submit Royston's criminal record statement to the department; and failure to notify the department that Royston was residing at the facility. [H&S 1522, 1550(a)-(d)] The department held that respondent's conduct was inimical to the health, safety, morals, and welfare of children in care and the people of this state, and demonstrated a present inability to conform to all laws and regulations governing foster care licenses. *Id*. The department also recognized that Royston's past conduct and respondent's violations created a risk to the well being of children in care at the facility.

[In re Emami](#), **10 CDSS 02. Possession and use of an illegal drug by a resident of a facility constitutes an unsafe and dangerous environment for clients in care.**

The Department revoked Respondent Mariam Emami's family child care home license, based upon its finding that her spouse, Respondent Mostafa Emami, smoked opium in the facility outside the presence of children over a period of several years, and that Mariam Emami was aware of Mostafa Emami's conduct. [H&S 1596.885(a) and (b); Reg. 102417(g)] Revocation was required to protect the public health, safety and welfare even though no child was harmed, because of the real potential that a child in care accidentally find the illegal drug or come upon Mr. Emami when he is consuming it. The Department found that, allowing Mr. Emami to use opium in the facility constituted conduct inimical to the health, morals, welfare or safety of an individual in or receiving services from a Department-licensed facility. [H&S 1596.885(c)] The Department also found that Mr. Emami's use of opium in the facility constituted conduct inimical to the health, morals, welfare or safety of an individual in or receiving services from a Department-licensed facility, which warranted excluding Mr. Emami from employment in, presence in, and contact with clients of any Department-licensed facility. [H&S 1596.8897(a)(1), (a)(2) and (a)(4); Reg. 102417(g)]

[In re Freeman](#), **99 CDSS 10. Persons with a non-exemptible crime are statutorily precluded from being granted a criminal record exemption by the Department.**

Respondent was convicted in 1973 for assault with a deadly weapon (which included use of a firearm) and he sought a criminal record exemption in order to continue his employment at a licensed facility. Respondent had not been arrested or incarcerated since 1978 and had become an ordained minister. Respondent dedicated most of his time to working with seniors and underprivileged youth.

The department denied respondent's exemption request, holding that "despite respondent's commendable rehabilitation efforts and religious mission, he is statutorily precluded from being granted an exemption by the Department and, consequently, cannot be present at or employed by the facility licensed by the department." [H&S 1522(g)(1), 1558(a)(3)] Under section 1522(g)(1), an exemption may not be granted for a "violent felony" as that term is defined in Penal Code section 667.5(c). Penal Code sections 657.5(c)(8) and 12022.5 state that "violent felony" includes a conviction for assault with a deadly weapon which is a firearm. The department concluded that since respondent's conviction was for a "violent felony," he is not eligible for an exemption and must be excluded from all licensed facilities. [H&S 1558(a)(2) and (3)]

[In re Galbraith](#), **99 CDSS 11. License is indivisible; when co-licensee commits wrongful or criminal acts the Department lacks authority to separate out the guilty person from the innocent person and must revoke the license.**

Respondents (husband and wife) were jointly licensed to operate a foster family home in 1993. In 1996, Mr. Galbraith was convicted of two counts of lewd and lascivious acts with a child under the age of 14. He had molested two foster children who were living with the respondents and under their care at the time. Mrs. Galbraith was unaware of her husband's molestations and removed him from the house when his actions were disclosed. At the time of the hearing, Mr. Galbraith was incarcerated in state prison. Mrs. Galbraith asserted that she should not be disciplined for her husband's conduct.

The department revoked the respondents' license based on Mr. Galbraith's convictions and conduct [H&S 1550(a), (b), and (c), 1552(d), Regs. 87061, 87064, 87072, and 89019]. The department held that only a single license was issued to the respondents and, as one of them had committed acts for which revocation is required, that license must be revoked. The department's action under H&S Code section 1550 is against the license and section 1550 does not authorize separating the guilty person from the innocent person. To be licensed, Mrs. Galbraith must apply for and obtain a new license.

[In re Gillespie](#), 10 CDSS 03. **License revocation is compelled based on spouse's misconduct; even though licensee is an innocent party and spouse no longer resides in the facility, the parties remain married and continue to have a social relationship.**

Respondent was a family child care home licensee when during the period of licensure, but when no day care children were present in the facility, Gillespie's spouse, Respondent Edmondson, who resided in the facility with Gillespie, engaged in threatening and violent conduct. Edmondson was convicted of felony assault with a deadly weapon. Gillespie obtained court orders removing Edmondson from the facility and prohibiting him from being within 100 yards from Gillespie and her daughters. Gillespie also removed Edmondson from the facility lease. However, Edmondson continued to be involved in a social relationship with Gillespie and they had no plans to divorce. The Department found that Edmondson's conduct posed a potential risk to children in care and was inimical to the health, welfare and safety of individuals receiving services. Because Gillespie was not able to assure a safe environment for children in care, the Department revoked her license. [H&S 1596.885(a), (b) and (c); Reg. 102423(a)(2)] The Department rejected Gillespie's claims that revocation was unfair because she did not engage in the misconduct, and because she had taken every possible step to deny Edmondson access to the facility. The Department noted that it cannot monitor the facility to assure compliance and the safety of children or guarantee that Gillespie and Edmondson will not reconcile. Thus, Gillespie could not be allowed to retain her license.

[In re Golston et al.](#), 99 CDSS 12. **In a decision on a motion to compel discovery, Department finds that failure to comply with discovery obligations results in exclusion of witnesses and documents from hearing.**

In this matter, the department brought a motion to compel discovery under Gov. Code section 11507.7 when respondents did not comply with the department's written discovery request made under Gov. Code section 11507.6. [H&S Code section 1551 provides that administrative actions brought by the department to suspend, revoke, or deny a license are governed by Gov. Code section 11500 et seq.] Respondents further failed to provide discovery at the pretrial conference and then did not comply with an ALJ's order at the pretrial conference that they produce their discovery on or before a specified date.

The ALJ hearing the motion issued two orders on the matter. The ALJ determined that "respondent's counsel violated, without substantial justification, a lawful order of the

presiding officer, to wit, the Prehearing Conference Order, and failed, without substantial justification to comply with a discovery request, to wit, the Department's discovery request . . . , each failure constituting a contempt within the meaning of Government Code section 11455.10(e)." The ALJ sanctioned the respondents by ordering specified witnesses and documents be excluded from the hearing on the merits for being "untimely disclosed."

[In re Green](#), 99 CDSS 13. **Leaving foster children without a responsible adult during absences from the facility constitutes failure to properly discharge the duties and responsibilities of a foster parent.**

Respondent held a license to operate a foster family home. While licensed she failed to protect one foster child from physical attacks by two older foster boys, and at times failed to provide adult supervision. Respondent also spanked one child and failed to provide medications to another.

The department revoked respondent's license finding that, although respondent was a caring person who attempted to provide a nurturing home, revoking her license was necessary to protect children in care. Respondent failed to properly discharge the duties and responsibilities of a foster parent in that she failed to leave the foster children under the supervision of a responsible adult during her absences from the facility. [Regs. 87064(a)] In addition, respondent violated the personal rights of a child by spanking him [Regs. 87072(a)(3)], and failed to properly assist a child with taking medication [H&S 1550(a), Regs. 87075(d)]. Respondent's violations were cause for revocation under H&S Code section 1550(a) and her conduct was inimical to the interests of children in care and the people of this state under H&S Code section 1550(c).

[In re Harris](#), 10 CDSS 04. **Pursuant to *People v. Sims*, upheld by *People v. Garcia*, former licensee is barred against relitigating factual findings and conclusions of a prior default decision revoking her license.**

The Department excluded Respondent from employment in state-licensed facilities, based upon its findings in a prior default decision revoking her day care license for failing to protect children in her care from corporal punishment, failing to have residents and employees fingerprint-cleared, violating staffing ratio requirements, failing to supervise children in care at all times, failing to keep her facility free from defects or conditions which might endanger children and making false statements regarding her husband's residence and regarding the care of children in her facility. [H&S 1596.885; Regs. 102423; 102370; 102270.1; 102416.5; 102417]. The Department held that Respondent was barred from relitigating those findings, under the doctrine of collateral



estoppel, pursuant to *People v. Sims* (1982) 32 Cal.3d 468, 481. The Department also held that Respondent engaged in conduct inimical to the health, morals, welfare or safety of children in care, or the people of the State of California, when she was convicted of driving a vehicle in willful and wanton disregard for the safety of persons, was on probation at the time of the hearing and gave patently false testimony regarding the incident leading to her conviction.

[In re Newton-John](#), 10 CDSS 06. **Licensee should never, even for a moment, leave a child alone or in the care of another young child while child is in a bath tub, swimming pool, spa, wading pool or other body of open standing water.**

Respondent's license to operate a family child care home was revoked based on findings that three children, ranging in age from four to five years, were swimming in pool and wearing flotation devices, but without adult supervision. The respondent was inside the home and had dozed off while bottle-feeding an infant. Another child was playing alone in the home. The Department held that leaving a young child alone or in the care of another young child in any body of water, even for a moment, poses foreseeable, serious risks of permanent brain damage or death. The Department stated that Respondent's conduct violated the regulations by failing to provide safe equipment [Reg. 102423(a)(2)], failing to constantly supervise the children in her care [Reg. 102417(a)], and by failing to ensure the inaccessibility of the pool to children [Reg. 102417(a)(5)]. The Department held that the Respondent's conduct constituted conduct inimical to the health, welfare and safety of children receiving services at the day care facility and established cause to revoke her license. [H&S 1596.885(c)]

[In re Oxford](#), 10 CDSS 07. **Licensee's promises to repeat Title 22 training despite escalation in licensing violations and prior opportunities to do so indicate training is not a sufficient remedy.**

Respondent held a license to operate a foster family home. In 2006, Respondent violated three regulatory requirements: (1) she failed to report that adult and minor relatives were residing at the facility [Reg. 89361(f)]; (2) Respondent permitted children to sleep in the facility living room [Reg. 89387(a)(3)]; and (3) Respondent permitted an adult to sleep with a child or with children [Reg. 89387(a)(8)]. Following the violations, in 2006 the Department permitted Respondent to undertake further training on Title 22 regulations. Despite the regulatory training, Respondent again violated three regulations in 2007: (1) Respondent permitted a child to wear tight-fitting jeans, causing the child to suffer from vaginitis [Regs. 89372(a) and (c)(6)]; (2) Respondent failed to report to the Department that the child frequently pulled her jeans over her vaginal area, and the

child's aggressiveness toward boys and her stealing food [Reg. § 89361(a)(3)]; and (3) Respondent permitted a child who was over five years old to share a bedroom with another child of the opposite sex. [Reg. 89387(a)(2)] The Department revoked Respondent's foster family home license based upon her regulatory violations and upon her conduct, which the Department deemed to constitute conduct inimical to the health, welfare and safety of an individual in, or receiving services from, the facility. [H&S 1550(a) and (c)] The Department rejected Respondent's offer to undergo retraining, holding the evidence did not establish that such training would be fruitful. The violations escalated to the point where a child's medical issue was ignored. The protection of the public health, safety and welfare warranted revocation.

[In re Powell](#), 99 CDSS 17. **Criminal conviction and subsequent lies to the Department demonstrate person does not possess requisite good character to warrant a criminal record exemption.**

Respondent sought an exemption in order to reside at his mother's certified foster family home, having been convicted for committing misdemeanor burglary (using stolen credit cards). In communications with the department regarding the conviction, respondent denied any involvement in the crime.

The department held that both the original crime and the subsequent misrepresentations to the department "demonstrate that respondent does not possess the requisite good character to warrant an exemption for his criminal record." [H&S 1522(g)(1)] The department stated that it "must be able to trust the truth and veracity of those who deal directly with foster children especially when reporting any incidents that may arise as well as engendering honesty as a positive roll model for the children." The department determined that respondent's criminal conduct and false statements to the department were inimical to the health, morals, welfare and safety of others and the people of this state. The department denied respondent's exemption request based on his convictions and conduct [H&S 1522(b) and (g)(1), Regs. 80019(a), and (g), and 88019(a)] and excluded him from all facilities licensed by the department [H&S 1558(a)(2) and (3)].

[In re Shiota](#), 10 CDSS 08. **Person's disregard for the victim of his crime undermines his evidence of rehabilitation; change in character and attitude is measured by the actions one takes to repair the damage.**

The Department denied Respondent's criminal record exemption request so he could operate a certified family home, pursuant to Health and Safety Code section 1522(g)(1) and Regulation section 80019.1(c)(4), because he failed to present substantial and

convincing evidence that he rehabilitated himself following his 1994 felony embezzlement conviction. The Department found that rehabilitation is established by conduct, not devotion. Respondent failed to show remorse by not contacting the victim and by not attempting to pay restitution more quickly or more fully, instead paying the bare minimum that he could. The Department also found that Respondent only took his restitution responsibility seriously when he faced the potential of a second probation violation and thereby sought to extend the terms of his probation. He did not pay interest to the victim of his embezzlement, even though he did not pay off the debt for five years after his conviction. The Department found that this conduct undermined Respondent's claim of rehabilitation.

**In re Thomas, 10 CDSS 09. Leaving children in a parked vehicle unattended by an adult demonstrates a severe lack of judgment and exposes children to unacceptable risk of harm.**

The Department revoked Respondent's family child care home license, based upon its finding that Respondent left her nine-year old daughter in charge of five children, ranging in age from six months to three years, in a van with no adults while she went to conduct business at her bank. [H&S 1596.885(a) and (b); Regs. 102402(a)(1), (2)] Respondent left the windows rolled down when she left her vehicle. A passerby noticed the van and called the police. When they arrived, officers found the windows were closed and the interior temperature exceeded 87 degrees. The police officers removed the children from Respondent's van. Respondent was away from the vehicle for twenty minutes, thereby exposing the children to grave harm. The Department rejected Respondent's defense that she meant no harm in leaving the children in the car with her nine-year old daughter and concluded that it could not evaluate the neglect and lack of supervision and safe accommodation violations based upon her good intentions or honorable motives. [Regs. 102417(a); 102423(a)(2)] The Department also held that Respondent's conduct constituted conduct inimical to the health, morals, welfare, or safety of individuals receiving services, justifying discipline. [H&S 1596.885(c); Reg. 102423(a)(3)]

**In re Torres, 10 CDSS 10. Repeated overcapacity places children at risk of harm and is a serious cause for concern; licensee's rude, abusive and uncooperative attitude towards licensing staff is inconsistent with licensure.**

In a family child care home license revocation matter, the Department held that Respondent's refusal to comply with the capacity limitations on her license by being repeatedly overcapacity constituted cause to impose discipline against the facility license. The Department also held that Respondent's multiple refusals to permit inspections, and her rude, abusive and uncooperative attitude, constituted a factor in

aggravation that was inconsistent with licensure. Since Respondent's violations of the laws and regulations of the Department were serious and substantial, and the evidence established she engaged in conduct which is inimical to the health, morals, welfare and safety of individuals receiving services from the facility and the people of this state, the license to operate a family child care home was revoked. [H&S 1596.885(a), (b) and (c)]

[In re Ziai-Nosrat](#), **10 CDSS 11. License application containing false information provides Department with insufficient reason to trust applicant to operate a licensed facility.**

The Department rejected Respondent's applications for a license to operate a family child care home at her residence, based upon its findings that Respondent: (1) omitted her mother as a resident of the proposed facility, when in fact she was; (2) claimed her assistant was a resident of the proposed facility, when the facts were otherwise; (3) misrepresented that her assistant lived at the proposed facility in order to use her requisite experience to qualify for a large home license; and (4) falsely advertised that she was operating a licensed facility. The Department found that Respondent demonstrated she cannot be trusted to report information truthfully and completely. The Department held that Respondent's false statements violated the statutory requirements to supply specified information, including the identity of all adults living in the home, and demonstrated poor moral character to a degree which was sufficient to disqualify her from licensure. [H&S 1597.54; 1596.885(b)]