

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)	
)	
C.D.B.)	OAH No. 16-1332-SAN
_____)	Agency No.

DECISION

I. Introduction

In 2014, the Office of Children’s Services entered two substantiated findings of sexual abuse against Caleb Brown.¹ Both findings were based on disclosures by his then 11-year-old daughter Maggie and 15-year-old stepdaughter Sara, that Mr. Brown had sexually abused each of them over a period of years, beginning when each girl was around six years old. Mr. Brown filed this administrative appeal of the substantiated findings two years later, claiming that the allegations were fabricated, and providing a written statement from Maggie recanting her prior claims. At an evidentiary hearing, OCS met its burden of proving that, notwithstanding Maggie’s later denial, it is more likely true than not true that Mr. Brown sexually abused both girls as they originally reported. The substantiated findings of sexual abuse are therefore affirmed.

II. Factual and Procedural History

A. Facts

1. Background

Caleb Brown and Susan Richards married in 1999. They had four children: Mark, Maggie, Corey, and Zeke. Sara Richards, Ms. Richards’ daughter from a prior relationship, also lived with them. Mr. Brown and Ms. Richards separated in 2006, and divorced in 2009. Their separation was acrimonious. Mr. Brown committed domestic violence against Ms. Richards and “spent some time in jail.”²

Mr. Brown later married Nancy Harris (who became Nancy Brown), and eventually adopted two of her children, Peter and Violet.³ At the time of the investigation giving rise to this case, Sara Richards (age 15) lived with her mother, and the Brown-Richards children – Mark (age

¹ This decision uses pseudonyms to protect the privacy of the non-parties.

² C.D.B. testimony; Ex. 4, p. 1 (“Ms. [Richards] reports Mr. [Brown] came to Ms. [Richards’] parents’ home (where she was staying) and threatened her and her current partner with a knife. Mr. [Brown] slashed tires and was put in jail for 14 days because of this incident.”).

³ Nancy Brown filed for divorce in June 2015, and the divorce was finalized in March 2017. During summer 2016, Mr. Brown met and moved in with Tara Moore. He now lives with Ms. Moore, her five-year-old daughter, and at least some of his children, including Maggie and Mark. T.M. testimony, C.D.B. testimony.

13), Maggie (age 11), Corey (age 10), and Zeke (age 7) – divided their time between Mr. Brown’s home and Ms. Richards’ home.

2. Reports of sexual abuse by Mr. Brown

This appeal arises out of OCS’s substantiation of sexual abuse allegations involving Mr. Brown’s stepdaughter, Sara, and biological daughter, Maggie. But the evidentiary record reflects that a total of four young female relatives have, at some point, disclosed having been sexually abused by Mr. Brown. They are, in addition to Sara and Maggie, a niece (Kelly), and a stepsister-in-law (Karen). The content and circumstances of each disclosure is described below.

a. Sara

In 2007, Sara disclosed that Mr. Brown had been sexually abusing her.⁴ Sara, who was then nine years old, was interviewed at Alaska CARES in October 2007,⁵ and told the interviewing detective that she was there to talk about “what my dad did to me.”⁶ Sara then described an incident when she was six years old when Mr. Brown “stuck his front private part in my back private part.” Sara indicated that similar abuse then occurred “a couple of times every month or something like that.” She said she “tried to tell her mom the first time it ever happened, but she didn’t know how to say it.”

Sara also said that, now that she was no longer living with Mr. Brown, she was worried about her younger stepsister, Maggie, because, “since he doesn’t see me anymore, I’m afraid he might be doing it to her.” When five-year-old Maggie was then interviewed, she did not disclose any abuse.⁷ However, she was also completely “unable to identify the difference between safe versus unsafe touches.”⁸ For reasons not documented in the record, Sara’s 2007 disclosure did not lead either to criminal charges or to a substantiated finding by OCS at that time.⁹

b. Kelly

In 2012, one of Sara’s cousins, Kelly Lewis, reported that Mr. Brown had sexually abused her during a sleepover with Sara several years earlier. Specifically, Kelly reported that Mr.

⁴ Ex. 2 (video); Ex. 4 (report); R. 0082.

⁵ Alaska CARES is a child advocacy center in Anchorage where children who are suspected victims of physical or sexual abuse are interviewed and evaluated by a multi-disciplinary team that includes social workers, medical professionals, and law enforcement, all with specialized training and experience in conducting such investigations. Lefebvre testimony.

⁶ Ex. 2; Ex. 4, p. 1.

⁷ Ex. 3; Ex. 5. While the 2007 Alaska CARES report identifies Maggie as seven, she was born in August 2002, the interview was conducted in November 2007, and she accurately states her age on the video as five. Ex. 5.

⁸ Ex. 3, p. 2; Ex. 5.

⁹ See R. 0082.

Brown had put his hand up her shirt and down her pants during the sleepover.¹⁰ This report was investigated by law enforcement in another state, but no charges were filed.¹¹

c. Karen

Ms. Richards' younger stepsister, Karen, has also accused Mr. Brown of sexual misconduct against her. Karen has reported that, while she was staying with the family as a teenager in 2006, Mr. Brown grabbed her butt, stuck his hand between her thighs, and made sexually suggestive statements to her.¹² While the exact timing of Karen's disclosure is unclear, when Mark Brown was interviewed in 2014, he reported being aware of Karen's allegations well before Maggie's June 2014 disclosure of sexual abuse.

d. Maggie

The fourth disclosure of sexual abuse – and one of two allegations underlying the substantiations at issue in this appeal – was made by Maggie in 2014. As described further below, Maggie initially disclosed sexual abuse to a friend, the friend's mother, and then her own mother. Maggie then described the abuse in a videotaped forensic interview, and later testified before a grand jury, but has since recanted her allegations.

The disclosures began on June 12, 2014, when Maggie told her best friend that Mr. Brown had sexually abused her on a camping trip to No Name a week earlier. Maggie's friend told her own mother, who told Ms. Richards, who called the police. The morning after these disclosures, at her mother's suggestion, Maggie wrote a two-page letter describing the sexual abuse.¹³ The letter described a first incident sometime after her parents divorced:

My dad one night started to touch my butt and then went into my pants and pulled down his pants and I was turned over the other way not looking but then when he pulled down his pants he put his penis in my butt.¹⁴

¹⁰ R. 0063 (Per Mr. Birtz: "In 2012, in Texas, [Kelly] disclosed that at a birthday party sleepover, the father laid down and started making out with her, and ran off when he put his hands down her pants"); R. 0077 (Per Det. Torres: "In 2009 ... Ms. Richards' stepsister [Karen Lewis's] daughter [Kelly] (age 10/11 at the time) was playing with [Sara] at Mr. [Brown's] home. Ms. [Lewis] said [Kelly] was sleeping in [Sara's] room when Mr. [Brown] put his hand up her shirt and down her pants."); R. 0082 (Per Det. Torres: "At age 10-11 . . . [Kelly] reported that Mr. Brown had crawled into bed with [Kelly] and tongue kissed her [and] touched her when [Kelly] stayed overnight with [Sara]. [Kelly] reported and was evaluated by a [Child Advocacy Center] in Texas in 2012").

¹¹ R. 0018; 0045, 0077, 0082, 0083.

¹² R. 0018, 0077-0078 ("Det. Torres said Ms. [Richards'] sister [Karen] told her Mr. [Brown] often grabbed her butt and told her how 'hot' she was. Ms. [Richards] said her sister told her one day while Ms. [Richards] was out, Mr. [Brown] put his hand between [Karen's] thighs, told her he loved her and that Ms. [Richards] was not satisfying him."); R. 0082.

¹³ R. 0086-0087, 0100.

¹⁴ R. 0086.

The letter then described the June 6, 2014 incident during a family camping trip at No Name, where Mr. Brown, Maggie, her brothers, and her younger stepsister had gone to No Name, but her stepmother Nancy and stepbrother Peter had stayed home. As described by Maggie, the boys were sleeping on the floor of the tent, and Mr. Brown was sleeping on an air mattress between 11-year-old Maggie and seven-year-old Violet.

I was facing the side of the tent and my step sister asked for my dad to rub her back but I never asked and when everybody fell asleep he even though[t] I was sleeping so he turned my way and started to rub my back and then he started to go down by the seconds and then he started to put his hands in my pants and then he started to put his finger in my V.J. and I started to cry but I did not cry out loud and it hurt me and I tried to move but then I got to the corner of the bed and then tent.¹⁵

Sometime shortly after telling her mother, Maggie also disclosed the abuse to a counselor, who described her disclosure as follows:

[Maggie] reports she was touched by father at least 3 times between 7-11 years old. She admits the last time it happened was June 6th. She expresses that she believes it could be happening to 7-year-old step sister who still lives with father because she sees father rubbing her sister ([Violet's]) back the same way father would when he would hurt her.¹⁶

3. 2014 investigation

Ms. Richards brought Maggie to Alaska CARES for a forensic interview on June 13, 2014, the day after her first disclosure.¹⁷ At a meeting with the Alaska CARES team prior to Maggie's interview, Ms. Richards explained that Maggie had disclosed abuse to a friend at a sleepover the night before. When Ms. Richards – who learned about these disclosures from the friend's mother – had asked Maggie what happened, Maggie told her that Mr. Brown “had started touching her” when she was six, and that, during the camping trip the prior weekend, Mr. Brown had started touching her back, then put his hands down her pants and penetrated her with his finger.¹⁸

Ms. Richards told the team Maggie had never said anything like this before, and had not disclosed any abuse to her therapist, although she had been talking to her therapist about not

¹⁵ R. 0086-0087.

¹⁶ R. 0085. Maggie, who now claims to have fabricated her sex abuse allegations, denies having discussed the abuse with her therapist. This denial is difficult to reconcile with the therapist's description of Maggie's disclosures, which include details not included in Maggie's June 13, 2014 letter. *Compare* R. 0085 *with* R. 0086-0087.

¹⁷ R. 0008.

¹⁸ R. 0094, 0101.

wanting to live with her father anymore.¹⁹ Ms. Richards told the CARES team about Sara’s allegations of sexual abuse years earlier, as well as Karen’s disclosures (indicating that Mr. Brown’s conduct towards Karen had led to their separation), but indicated that she did not think Maggie knew about Sara’s prior allegations.²⁰

After the team’s “pre-meeting” with Ms. Richards, Anchorage Police Department Detective Torres interviewed Maggie.²¹ After first volunteering that she was at Alaska CARES “because [her] dad has been touching [her],” Maggie described several incidents of abuse. Maggie first described an incident when she was seven years old and sharing a room at her grandparents’ with her brothers. After the other children fell asleep, she said, Mr. Brown put his hands down the back of her pants, then put “his private part” into her “back private part,” which Maggie said “felt really uncomfortable” and “hurt me.” Maggie described another incident several years earlier when her stepmother was out of town and Mr. Brown tried to get Maggie to suck his penis, but she said no.

The final incident Maggie described was the incident at No Name, when Mr. Brown had taken Maggie and her siblings camping without their stepmother. She told Detective Torres that she and her father were on an air mattress in a tent and he began rubbing her back, then fondled her breasts and penetrated her vagina with his finger. Maggie said she “felt really uncomfortable” and that she was crying, but no one could hear her.

Observation of the video recording shows that, while Maggie maintained a somewhat matter-of-fact demeanor throughout the interview, and never appeared outwardly emotional, her demeanor changed noticeably when the interview transitioned from general rapport-building conversation to describing and answering questions about the sexual abuse. As she began describing the sexual abuse, Maggie began looking down or away more, and her tone got quieter. As she described certain actions by Mr. Brown, such as tickling her, or moving his hands down from her back into her pants, she used hand gestures to demonstrate the actions she was describing. Her descriptions of these experiences, particularly when coupled with her gestures, were believable.

¹⁹ R. 0101. Ms. Richards also noted that, a few months earlier, Karen had asked whether she thought Maggie was safe, “because [Maggie] is about the same age as [Sara] was then.” Ms. Richards had asked Maggie “if anything was going on,” and Maggie had denied it. R. 0101. Ms. Richards also told the team that all of her kids had recently stated they want to live with her full time, and speculated that Maggie had finally made the disclosure (which was made on a Wednesday night) to avoid returning to her dad’s house that coming Sunday. R. 0101.

²⁰ R. 0101.

²¹ R. 0093-0098; 0108-109. The videotape of Maggie’s interview is part of the record; the summaries herein are based on a review of that evidence.

A few days after Maggie’s interview, Detective Torres interviewed Sara about the events she had disclosed in 2007.²² Sara was visibly distraught throughout this interview. She told Detective Torres that Mr. Brown had begun sexually abusing her when she was 6 or 7, and stopped when she was around ten. As when she was interviewed in 2007, Sara indicated that Mr. Brown had put his penis into her bottom. Sara also described incidents when Mr. Brown put his finger in her vagina, rubbed his penis on her labia, tried to put his penis in her mouth, and tried to bribe her in exchange for allowing him to “put his penis in her bottom.”²³

Ms. Richards met with the Alaska CARES team for post-conference meetings after each girl’s interview. In the post-conference meeting with the Alaska CARES team after Maggie’s interview, Ms. Richards indicated she was “concerned for her safety,” and expressed worry “that [Mr. Brown] is going to get really angry like he did the last time.”²⁴ In the post-conference meeting after Sara’s interview, Ms. Richards described Mr. Brown as verbally abusive, and recounted an incident in which he threatened her with a shotgun after she rebuffed his sexual advances.²⁵

The three other Richards-Brown children were also interviewed at Alaska CARES in July 2014.²⁶ In his interview with OCS worker Alfred Birtz, 13-year-old Mark indicated he was aware of Maggie’s and Sara’s allegations against their father. Mark said that Maggie had told him that their dad was touching her, that she told him the Wednesday after the No Name trip, and that she “said it in a whisper voice.” Mark provided details of what Maggie said Mr. Brown had done, and also confirmed her description of Mr. Brown sleeping on the air mattress with the two girls (although Mark recalled Maggie being between her younger sister and her father, rather than between her father and the wall of the tent).²⁷ Mark also said that Sara had told him “a year or two earlier” that their father had sexually abused her as well as their cousin, Kelly.²⁸ Mark told

²² R. 0047-0049; 0078-0080; 0104-0105. As with Maggie’s interview, this summary is based on a review of the videotaped interview in the record.

²³ R. 0079.

²⁴ R. 0101. Mr. Brown acknowledges spending time in jail for domestic violence towards Ms. Richards when their relationship ended. During Mark’s interview in July 2014, he told OCS worker Alfred Birtz that Mr. Brown had slashed Ms. Richards’ girlfriend’s tires and chased after her. R. 0056.

²⁵ R. 0079-0080.

²⁶ R. 0110-0111 (Corey); R. 0112-0113 (Zeke); R. 0106-0107 (Mark).

²⁷ R. 0066, 0106-0107.

²⁸ R. 0055, 0106-0107.

Mr. Birtz he felt bad for his sister, and that he believed that his dad was going to jail because he had “done it three times and had gotten away with it.”²⁹

4. Criminal case

Based on the girls’ statements at Alaska CARES, criminal charges were filed and Mr. Brown was arrested on 00/00/2014.³⁰ Ms. Richards also obtained a long-term domestic violence restraining order against Mr. Brown.³¹

Sara and Maggie both testified before a grand jury, along with Ms. Richards and Detective Torres.³² Both girls testified consistent with their videotaped forensic interviews. Sara testified that on several occasions beginning in 2007 or 2008, Mr. Brown entered the room where she was sleeping with her siblings, pulled down her pants, and touched her vagina.³³ Sara also testified that he asked her to touch his penis, and attempted to coerce her into performing fellatio on him.³⁴

Maggie testified that in 2012, Mr. Brown likewise tried to coerce her into performing fellatio on him – specifically, she testified that he removed his pants, asked her to “suck on his private part,” and offered her a toy if she would do so.³⁵ Maggie also testified about the 2014 camping trip to No Name, and described her father fondling her breasts and putting his finger into her vagina during that trip.³⁶

Mr. Brown was indicted on multiple counts of sexual abuse against Maggie and Sara.³⁷ However, the charges against him were later dismissed in 2015, because the grand jury had been improperly told about the allegations of the girls’ cousin, Kelly, who was supposed to testify but then did not do so.³⁸ For unknown reasons, the District Attorney’s Office apparently did not attempt to re-indict Mr. Brown.

5. OCS’s June 2014 substantiation decision

OCS social worker Alfred Birtz prepared an Initial Assessment Summary, in which he found that the allegations of sexual abuse as to Sara and Maggie were substantiated by the

²⁹ R. 0055. The two younger boys – Corey, age ten, and Zeke, age 7 — did not know anything about the allegations and did not make any disclosures. R. 0059-0061, 0110-0111 (Corey); R. 0112-0113 (Zeke).

³⁰ See Anchorage Superior Court Case No. 3AN-14-00000CR.

³¹ C.D.B. testimony.

³² Their testimony was summarized by Superior Court Judge Phillip Volland in an Order in the criminal case. As discussed below, Judge Volland’s summary, which is annotated with pinpoint citations to the grand jury transcript, is the kind of evidence on which reasonable people would rely in the conduct of serious affairs. See 2 AAC 64.290(a)(1).

³³ R. 0041.

³⁴ R. 0041.

³⁵ R. 0041, 0044.

³⁶ R. 0041-0042.

³⁷ R. 0041.

³⁸ R. 0045.

evidence described above.³⁹ In June 2014, a letter was sent to Mr. Brown informing him of the substantiation decision and the right to appeal it.

6. Maggie’s November 2016 recanting

In the meantime, at some point after the restraining order expired, Maggie and Mark began spending time with their father again.⁴⁰ Additionally, Mr. Brown separated from and eventually divorced Nancy Brown.

In July 2016, Mr. Brown met and began dating and living with Tara Moore, who has a five-year-old daughter.⁴¹ OCS received a report of harm about this living arrangement, and Ms. Moore and Mr. Brown were contacted about concerns that Mr. Brown, given his prior substantiations for sexual abuse, should not be living with a young girl.⁴² The OCS investigation created significant stress for the household.⁴³

On November 2, 2016, at Ms. Moore’s suggestion, Maggie wrote a letter addressed “To The OCS” in which she recanted her prior allegations against Mr. Brown.⁴⁴ Maggie’s letter states that she lied because she and her siblings did not like living with her stepmother Nancy and did not want to have to live with Mr. Brown and Nancy full time.⁴⁵ The letter focuses on the many ways in which Maggie feels Nancy mistreated Mr. Brown, Maggie, and her siblings, and alleges:

[Nancy] would always try to take me and my brothers away from my mom. And [Nancy] was so close to getting full custody of me and my brothers when I was in 6th grade, so I just had to do something about it and lying about what I said about my dad was the only thing I thought about doing from getting stuck at my dad’s house and not seeing my mom anymore.

The letter ends with a statement that, “all I want is for you guys to just leave me and my family be . . . I just want to be with my family with none of these problems.”⁴⁶

B. Procedural History

On November 3, 2016, Mr. Brown filed this administrative appeal of the June 2014 substantiation decision. The appeal was timely because OCS’s June 2014 letter notifying Mr. Brown of the substantiation decision informed him of his right to appeal, but neglected to place a time limit on the appeal opportunity. Along with his appeal request, Mr. Brown submitted (1) the

³⁹ R. 008-010.

⁴⁰ C.D.B. testimony.

⁴¹ T.M. testimony.

⁴² T.M. testimony; C.D.B. testimony; Lefebvre testimony.

⁴³ T.M. testimony.

⁴⁴ T.M. testimony; R. 0032. In the letter, Maggie never actually says that Mr. Brown did not sexually abuse her; she just says she “lied about what my dad had done because I wanted to get away from [Nancy].”

⁴⁵ R. 0032.

⁴⁶ R. 0032.

letter from Maggie; (2) a letter from his girlfriend of five months, Ms. Moore; (3) letters purporting to be from Ms. Richards and a family friend named Wallace Franklin; (4) a letter from a polygraph examiner; and (5) Judge Volland’s 2015 Order in his criminal case.⁴⁷

An evidentiary hearing was held on April 21, 2017. Mr. Brown appeared in person and represented himself. Mr. Brown was accompanied to the hearing by Ms. Moore, 15-year-old Mark, and 14-year-old Maggie, all of whom testified. OCS was represented by Assistant Attorney General Laura Bowen, and testimony was taken from OCS Protective Services Specialist Deborah Lefebvre. All exhibits were admitted by stipulation.⁴⁸

III. Discussion

A. Applicable law

This appeal arises out of OCS’s decision to substantiate two allegations of sexual abuse.⁴⁹ The child protection statute defines child abuse to include the “sexual abuse...of a child under the age of 18 by a person under circumstances that indicate that the child’s health or welfare is harmed or threatened thereby.”⁵⁰ The Child Protection statute does not further define the term “sexual abuse,” but it is beyond question, and has not been disputed in this case, that the acts alleged – namely, fondling of both children’s vaginal areas and breasts, vaginal and anal penetration, and fellatio – fall within the commonly accepted use of that term.

OCS bears the burden of proving its substantiated findings should be upheld.⁵¹ Unlike in criminal prosecutions, where the state must carry its burden “beyond a reasonable doubt,” in this context the burden of proof is considerably lower. In this case, OCS must establish “by a preponderance of the evidence” – that is, OCS must prove that it is more likely true than not true – that Mr. Brown committed the acts of which he is accused.⁵²

B. Evaluation of the evidence

As OCS observes in its prehearing brief, cases involving allegations of sexual abuse against children often present difficult evidentiary issues and turn on credibility determinations.

⁴⁷ R. 0032– 0045. These submissions are discussed in further detail below.

⁴⁸ Ms. Lefebvre brought to the hearing evidence from the 2007 investigation that OCS had not previously provided in this case. Mr. Brown was offered several opportunities to object to this late-disclosed evidence and to request its exclusion, but he elected to waive objections to admissibility in favor of having a complete record.

⁴⁹ See generally, AS 47.17.010; AS 47.17.040(a); AS 47.17.290(3).

⁵⁰ AS 47.17.290(3).

⁵¹ 2 AAC 64.290(e).

⁵² Common sense supports the conclusion that the conduct alleged here is per se harmful, so, if proven, necessarily satisfies AS 47.17.290(3)’s requirement of “circumstances that indicate that the child’s health or welfare is harmed or threatened thereby.” See *Matter of H.N.*, OAH No. 12-0715-SAN, at pp. 6-7 (Commissioner of Health & Soc. Svcs 2013).

Because OCS relies almost exclusively on documentary evidence and Mr. Brown has likewise placed strong reliance on documents, this decision will first address evidentiary issues raised by those materials. The witness testimony presented at the hearing is then addressed, particularly in the context of the other evidence that tends to support or refute that testimony.

1. Admissibility of hearsay documents generally

The formal rules of evidence do not apply in these proceedings, “except as a guide.”⁵³ The standard for admissibility is whether the evidence presented is the kind of evidence on which reasonable people might rely in the conduct of serious affairs.⁵⁴ To the extent that we look for guidance from the Rules of Evidence, a threshold issue as to virtually all of OCS’s evidence in this case is that OCS relies, almost exclusively, on hearsay – that is, on out-of-court statements offered to prove the truth of the matter asserted.⁵⁵

Hearsay is not admissible under the Rules of Evidence, except under the various exceptions recognized by those rules.⁵⁶ In administrative proceedings, however, hearsay is admissible. Again, because we use the rules of evidence as a guide, the question is whether the particular type of evidence, including particular types of hearsay evidence, is nonetheless the kind of evidence on which reasonable people might rely in the conduct of serious affairs. A classic example of such evidence are the forensic interviews; attributes supporting their reliability include being conducted by trained forensic interviewers, and that the videotapes afford the factfinder the ability to view the speaker as the statement is made.

Of course, all of the OCS and Alaska CARES records are also out-of-court statements. The vast majority are at least double hearsay, in that the author has recorded what another witness ostensibly told them. Certainly, multiple layers of hearsay diminish the overall reliability of evidence. It would be preferable to at least have heard directly from the investigator, if not the underlying witness. But the official records in this case – most notably, the Alaska CARES reports – are the type of evidence that reasonable people would rely on in the conduct of serious affairs. The Alaska CARES reports summarize the videotaped forensic interviews, as well as the

⁵³ 2 AAC 64.290(b).

⁵⁴ 2 AAC 64.290(a)(1).

⁵⁵ Alaska R. Evid. 801(c). While some of the documents on which OCS relies might qualify for a hearsay exception, such as the exception for business records, the documents are offered largely because they contain summaries or quotations of what people other than their author allegedly said. In other words, even if the documents themselves are admissible hearsay, they may also contain additional layers of hearsay.

⁵⁶ Alaska R. Evid. 802. In addition to the numerous hearsay exceptions identified in Rules 803 and 804, there are, of course, also numerous circumstances in which out-of-court statements are not considered hearsay at all (including, most obviously, when the statement is not offered “to prove the truth of the matter asserted.”). See Alaska R. Evid. 801(c), (d).

pre- and post-conference meetings, which were not videotaped, attended by Ms. Richards, Mr. Birtz, Detective Torres, and other team members. The reports' summaries of the forensic interviews closely track the videotaped interviews themselves. This accuracy and internal consistency allows a presumption that the same care was used to accurately document statements made during the pre- and post-conference meetings. Thus, despite their hearsay nature, they are admissible in this proceeding.

2. Documentary evidence of allegations against Mr. Brown by other victims

A more specific evidentiary issue concerns allegations by other alleged victims. Although the substantiations being appealed only involve Sara and Maggie, the record contains evidence of allegations also having been made against Mr. Brown by his niece, Kelly, and by Ms. Richards' younger stepsister, Karen. For the reasons that follow, those allegations are admissible in these proceedings and, while not determinative of the outcome, are part of the overall evidentiary basis on which this decision relies.

To the extent that we again look for guidance from the Rules of Evidence, the particular evidence at issue implicates rules relating to out-of-court statements in general, and also relating to character or propensity evidence. All of the reported allegations by Kelly and Karen appear in the context of multiple layers of hearsay – with Alaska CARES reports summarizing Detective Torres' and Mr. Birtz's reports of what Kelly and Karen have told them, as well as what other witnesses reported being told by Kelly or Karen. While having Kelly or Karen sit in the hearing room and testify directly and subject themselves to cross-examination undoubtedly would have been more informative as to the question whether Mr. Brown did in fact sexually abuse them, the record sufficiently and reliably documents, at a minimum, that both girls have accused Mr. Brown of the acts as described above in the records. The records document that OCS and law enforcement personnel involved in this investigation spoke with both Kelly and Karen, and described their allegations in official reports related to this investigation. Those descriptions were consistent with other descriptions of their allegations, such as Ms. Richards' description and the information in Mark's videotaped interview. There is enough information of sufficient presumed trustworthiness from which a generalized picture has been presented that both Kelly and Karen accused Mr. Brown of the acts as described above and in the records.⁵⁷

A separate question is whether it is permissible to consider such evidence in determining whether Mr. Brown sexually abused Sara and/or Maggie. The Rules of Evidence generally

⁵⁷ Indeed, Mr. Brown never denied that these allegations were made.

prohibit the introduction of evidence of prior bad acts to prove that the person has a propensity for certain conduct and so probably acted in conformity with that propensity. Thus, Evidence Rule 404(b)(1) begins by stating that “[e]vidence of other crimes, wrongs, or acts is not admissible if the sole purpose for offering the evidence is to prove the character of a person in order to show that the person acted in conformity therewith.” An exception exists, however, where the evidence tends to show a generalized pattern or plan of conduct. There, evidence of prior acts may be admissible to show that the conduct alleged is part of that larger plan or pattern. Rule 404(b)(1) thus explains that evidence of prior bad acts “is, however, admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Under this exception, the Alaska Court of Appeals has allowed admission of evidence that a defendant charged with sexually abusing one of his daughters had used similar methods to sexually abuse his other two daughters. This evidence was admissible in *Soper v. State* because it tended to prove that the accused engaged in a distinctive pattern of abuse.⁵⁸

Further, in sexual abuse prosecutions, Evidence Rule 404(b)(2) expressly permits, in a prosecution for sexual abuse of a child, evidence of acts by the defendant towards other children if the offenses and victims were both similar to the offense and victim in the instant case.⁵⁹ Here, the guidance of the rules is that, where child sexual abuse is alleged, we may consider evidence that the accused has committed similar acts against similar children. This guidance is particularly helpful here because of the similarities amongst the children who have disclosed abuse by Mr. Brown. For example, both Sara and Maggie allege similar abuse in terms of when the abuse started, the circumstances under which the abuse would occur, and the acts alleged. Their cousin Kelly’s disclosure is similar in terms of the age of the victim, the familial relationship, the abuse occurring during a time when others were presumably sleeping, and some of the specific acts alleged. While these similarities might not rise to the level of Rule 404(b)(2) admissibility in a

⁵⁸ *Soper v. State*, 731 P.2d 587, 590 (Alaska 1989) (“As the state points out, the prosecution’s witnesses did not accuse Soper of isolated incidents of sexual abuse. Each testified to a continued pattern of sexual abuse taking place over a substantial period of time. Each was [abused] at approximately the same age, under virtually identical circumstances. While some of the incidents appear remote when viewed in isolation, the common experiences of each of these young women establishes a striking pattern of behavior that seems to occupy the middle ground between evidence of character ... and habit[.]”).

⁵⁹ Evidence Rule 404(b)(2) (“In a prosecution for a crime involving a physical or sexual assault or abuse of a minor, evidence of other acts by the defendant toward the same or another child is admissible if admission of the evidence is not precluded by another rule of evidence and if the prior offenses (i) are similar to the offense charged; and (ii) were committed upon persons similar to the prosecuting witness.”).

criminal prosecution, they are sufficient here, where the formal rules serve only as a guide, for Kelly's allegations in particular, to be factored into the analysis.

Further, and more fundamentally, the evidence that Kelly and Karen also disclosed sexual abuse against Mr. Brown was not offered or considered for the impermissible purpose of Rule 404(b)(1) – that is, for the sole purpose of showing bad character and the likelihood of conduct in conformity therewith. Rather, the evidence shows a pattern of disclosures of sexual abuse by young relatives of Mr. Brown – a pattern tending to make Maggie's recantation less believable than it otherwise might be.

In short, after considering the evidentiary rules that guide but do not govern these proceedings, I have concluded that the evidence as to both girls' disclosures may be considered in the evaluation of this case. It is neither necessary nor possible to decide here whether or not Mr. Brown committed the acts described by Kelly or by Karen. But the fact of those allegations is one factor among others that is considered and given some weight in evaluating the evidence.

3. Documentary evidence relating to statements by Ms. Richards

Neither party called the girls' mother, Susan Richards, to testify. The agency record includes hearsay statements from Ms. Richards in the 2007 and 2014 Alaska CARES reports, OCS case worker notes, and the grand jury. The record also includes a much later letter, purporting to be from Ms. Richards, which Mr. Brown submitted with his appeal request. The statements attributed to Ms. Richards within the agency records are given far more weight than the 2016 letter.

The statements in the agency record include Ms. Richards' descriptions of both girls' disclosures, at the time each disclosure was made. In both instances, Ms. Richards' account matches the girls' contemporaneous account of those events. Ms. Richards' statements in 2007 and 2014 are also consistent with one another, and with other evidence in the record. For instance, Ms. Richards described domestic violence that Mr. Brown admitted to in his testimony and that Mark also described in his 2014 videotaped interview. And Ms. Richards described to the Alaska CARES team an incident in which Mr. Brown accosted her with a shotgun, an event which was also separately relayed to OCS's Alfred Birtz by Ms. Richards' stepsister, Karen.⁶⁰

⁶⁰ R. 0078 (Per Det. Torres: "Ms. [Richards] said Mr. [Brown] put a gun to her head and demanded 'sex or die.'"); R. 0082 (Per Mr. Birtz: "[Karen] reported issues of domestic violence between [Caleb] and [Susan] and [Caleb] and the children. [Karen] stated that [Caleb] had put a gun to [Susan's] head and demanded sex[.]"); R. 0083 ("Ms. [Richards] stated that at one time she told him that she did not want to have sex, 'there was a shotgun in the house, he grabbed it and was threatening me.' When asked if she complied with sex she stated 'yes,' and that she was 'too scared' to call the police").

The internal consistency of the statements, their consistency with other information in the record, and their presence in both case worker notes and official investigation reports, all make Ms. Richards' hearsay statements in the agency record sufficiently reliable to come within the broad umbrella of "evidence of the type on which reasonable people might rely in the conduct of serious affairs."⁶¹

Both because it is unauthenticated and because it is such a stark departure from Ms. Richards' prior statements, the letter submitted by Mr. Brown with his appeal does not. There is no evidence that it was in fact written by Ms. Richards. The letter describes Mr. Brown as "a great father" who has "always been there for [their four children] whenever they need him." Although multiple sources described Mr. Brown's domestic violence against Ms. Richards and her new partner following their separation, and although, in 2014, Ms. Richards told an OCS social worker and an APD detective that Mr. Brown once put a gun to her head and forced her to have sex, and although it is undisputed that Mr. Brown served time in jail for domestic abuse against her, the letter describes him as "very caring and mild mannered."⁶² The letter says that Ms. Richards never witnessed any abuse, would not let her kids be around him if she believed he was abusing them, and agrees "that our kids hated [Nancy] so much that [Maggie] could've lied about her dad so that they can come live with me."⁶³ Given the stark contrast between Ms. Richards' prior statements and actions and the conclusory statements in this letter, the letter is of questionable provenance and, even if it was written by Ms. Richards, of no evidentiary value in the absence of live testimony by Ms. Richards.

4. Additional documentary evidence submitted by Mr. Brown

a. *Wallace Franklin letter*

Mr. Brown also submitted a letter signed "Wallace D. Franklin," indicating the writer has been a close family friend of Mr. Brown for eight years and has never observed "any form of abuse especially sexual abuse" by Mr. Brown. The letter describes Nancy as abusive towards Mr. Brown, including alleges that the writer witnessed Nancy "throw knives at [Caleb] in front of the

⁶¹ 2 AAC 64.290(a)(1).

⁶² Compare R. 0017 with R. 0036, 0078 (Per Det. Torres: "Ms. [Richards] said Mr. [Brown] put a gun to her head and demanded 'sex or die.'"); R. 0082 (Per Mr. Birtz: "[Karen] reported issues of domestic violence between [Caleb] and [Susan] and [Caleb] and the children. [Karen] stated that [Caleb] had put a gun to [Susan's] head and demanded sex[.]"); R. 0083 ("Ms. [Richards] stated that at one time she told him that she did not want to have sex, 'there was a shotgun in the house, he grabbed it and was threatening me.' When asked if she complied with sex she stated 'yes,' and that she was 'too scared' to call the police").

⁶³ R. 0036.

kids.” The letter indicates that Maggie confessed to the writer that she lied “because she knew her dad would ultimately forgive her.”⁶⁴

Mr. Franklin did not testify, and no one testified about him – who he is, how the letter came about, the circumstances of the conversation he supposedly had with Maggie. Further, even if the letter is genuine, the information in it is of questionable usefulness. That a family friend did not personally witness acts of sexual abuse is in no way probative of whether the abuse occurred. Sexual abuse is by its nature an act that the perpetrator seeks to hide from the other adults in a child’s life, and both girls reported that the abuse only occurred when no other adults were present. The letter, like Mr. Brown’s testimony, largely focuses its attention on Nancy’s supposed bad acts (in particular, with a distracting description of a collateral “knife throwing” incident about which no other witness testified). Because Mr. Franklin did not testify and no testimony was offered to verify let alone contextualize his letter, the letter cannot be viewed as the kind of evidence on which reasonable people might rely in the conduct of serious affairs.⁶⁵ Accordingly, his letter is given no weight.

b. David Raskin letter

Mr. Brown also attached an October 2014 letter from David Raskin, Ph.D., stating that Mr. Brown had participated in a polygraph examination with Dr. Raskin, and that Dr. Raskin believed with more than 90% certainty that Mr. Brown had not “engaged in any sexual act” with either Maggie or Sara.⁶⁶ The letter is not particularly helpful since Dr. Raskin did not testify to describe with any detail the examination he conducted or its scientific validity. Moreover, a recent decision by the Commissioner’s designee in a substantiation appeal expressly rejected polygraph results as inherently unreliable.⁶⁷ Accordingly, the polygraph letter is afforded no weight.

c. Judge Volland’s Order

Mr. Brown submitted Judge Volland’s 2015 Order in his criminal case. As described above, Judge Volland’s Order is useful in its summary of grand jury testimony, which is not itself in the record. A description of the girls’ sworn testimony in a published superior court decision is certainly evidence on which reasonable people can rely in the conduct of serious affairs, and Judge Volland’s summary of that testimony is taken into account accordingly.

⁶⁴ R. 0037.

⁶⁵ 2 AAC 64.290(a)(1).

⁶⁶ R. 0038-0040.

⁶⁷ *Matter of B.C.J.*, OAH No. 15-0630-SAN (Comm’r Non-Adoption 2016).

To the extent Mr. Brown intends to suggest otherwise, Judge Volland’s Order – and the dismissal of the criminal case against him – does not provide evidence tending to disprove the underlying allegations against Mr. Brown. To the contrary, Judge Volland describes both girls’ grand jury testimony as corroborating their Alaska CARES interviews, and as satisfying the elements of the multiple counts of criminal sexual abuse with which Mr. Brown was charged. Judge Volland did not make any factual finding regarding whether or not Sara or Maggie were abused.

Judge Volland dismissed the indictment based on the grand jury having been told about Kelly’s allegations, but then not actually hearing from Kelly herself. However, as discussed above, the evidentiary basis on which Judge Volland relied is not binding in this administrative proceeding, and the other allegations are appropriately considered here as part of the totality of circumstances under which OCS must prove that Mr. Brown more likely than not committed the acts on which the substantiated findings are based.

5. Credibility of witness testimony

a. *Mr. Brown’s testimony*

Mr. Brown denies having sexually abused either of his daughters. But – both standing alone and particularly in the context of the other evidence – this testimony was unconvincing. Mr. Brown mostly focused his testimony on the problems he had with Susan Richards, chiefly relating to what a bad parent he claims she is. Mr. Brown also testified about parenting mistakes he made while following the lead of his second ex-wife, Nancy, in treating his biological kids unfairly. And he testified that his children used to “lie all the time,” but that now they – at least Mark and Maggie – are being truthful.

Mr. Brown suggested that Sara’s 2007 disclosure was a lie orchestrated by Ms. Richards during a custody battle in which he was the better parent. Mr. Brown was very intent on disparaging Ms. Richards. For example, he testified that Sara’s story is inherently unbelievable because Sara says she told her mom about the abuse after they returned from a movie, but “[Susan] never took the kids to the movies!” Mr. Brown’s repeated focus on Ms. Richards’ character made his testimony seem defensive and less reliable.

Mr. Brown then suggested that Maggie likewise lied about abuse because she did not want to live with him and Nancy. In a particularly unconvincing narrative, Mr. Brown appeared to suggest that his “kids” had tricked him into going camping in No Name in order to somehow lay the ground work for a sex abuse allegation. The entire area of testimony lacked credibility on its

face, and did not mesh with that of any other witness. Mr. Brown depicted “the kids” as if they were collectively colluding against him, but even Maggie’s actual recanting did not match this version of events. (Maggie described colluding with her friend, not hatching a plan with her siblings).

Nor did Mark’s testimony support this suggestion of collusion. Mark agreed with Mr. Brown that the kids had “begged” to go camping, but he did not endorse having advance knowledge of Maggie’s “plan,” or any other involvement consistent with Mr. Brown’s suggestion that his children had coerced him into camping in order to lay the groundwork for a sexual abuse allegation. Like his preoccupation with attacking Ms. Richards’ character, Mr. Brown’s implausible insinuation that his children entrapped him by conning him into going camping in No Name was unconvincing and cast doubt on the rest of his testimony.

In short, Mr. Brown’s testimony as a whole was unpersuasive. He was mostly focused on blaming his two ex-wives for the allegations against him, and painting himself as the better parent. Mr. Brown also did not offer any testimony (his own or others’) rebutting the allegations against him made by other young relatives (Kelly and Karen), or explaining how these various allegations by different children at different times fit into his narrative of being victimized by colluding children and scheming exes. Weighed against the other evidence, I did not accept Mr. Brown’s denials as truthful.⁶⁸

b. Mark’s testimony

Mark gave testimony that was flatly inconsistent with his videotaped OCS interview from 2014.⁶⁹ And Mark’s awareness of specific facts in the 2014 interview made his current denial of ever having known those facts plainly not credible. For example, in 2014, Mark told OCS worker Birtz that Sara had told him about her abuse and their cousin Kelly’s years earlier. Mark now

⁶⁸ While not testimonial, one other point about Mr. Brown’s actions bears mention. While Mr. Brown had every right to bring witnesses, including his children, to the hearing, it was troubling that he made no attempts whatsoever to prevent his minor children from hearing and viewing this case’s graphic sexually-themed evidence – namely, the videotaped forensic interviews in which Sara and Maggie described and answered detailed questions about sexual acts perpetrated by Mr. Brown. After OCS’s counsel offered to waive the exclusionary rule so that all of Mr. Brown’s witnesses could remain in the hearing room, the administrative law judge offered Maggie and Mark the option of waiting outside while the videos played. Maggie in particular appeared extremely uncomfortable at the prospect of viewing the forensic interview videos, and she very quickly excused herself from the hearing room. Mark indicated that he preferred to stay in the room, and he was initially allowed to do so. After some of the videotaped evidence had been viewed, however, the administrative law judge directed Mark to wait outside until it was his turn to testify, explaining that this evidence was simply inappropriate for viewing by a minor. Mr. Brown’s failure to take any such steps to protect his minor children from viewing these materials was, at a minimum, a striking display of poor boundaries.

⁶⁹ Mark was surprised to learn that there was a videotape of his 2014 interview with OCS.

denies ever having discussed this with Sara, or ever having known about Kelly's allegations – denials that are simply contradicted by his earlier videotaped statements.

Mark also now says that Maggie did not tell him “any details” of the abuse, while in his videotaped interview shortly after her disclosure he recounted the specific details Maggie had told him. And while Mark now says he never believed Maggie, the 2014 videotape – on which Mark says his “heart dropped,” and that he “knew” his dad was going to jail because he had done the same thing to Sara and Kelly – suggests otherwise. All of these contradictions call into question the utility of Mark's current testimony about how he recalls the events in question.

As to his current recollection, Mark described the camping trip differently than he did immediately after it occurred – now insisting that he was the last one to fall asleep, whereas he told Mr. Birtz that he had fallen asleep right after his brother Zeke and before Maggie or Mr. Brown.⁷⁰ And Mark testified that he had slept between his father and Maggie on the air mattress, whereas in July 2014, he had confirmed Maggie's account that she and her seven-year-old half-sister Violet had shared the air mattress with Mr. Brown.⁷¹ Mark's videotaped description of these events five days after they occurred were more reliable than his reconstructed recollections several years later.

Further, Mark was obviously being untruthful on direct examination from his father when asked about life with Nancy. It was apparent during this exchange that Mark was trying to give his father the answers he thought his father wanted, even when the answers he was giving were almost certainly untrue. Mr. Brown asked several questions attempting to bolster his own testimony that the kids resented him during his relationship with Nancy. Mark, who clearly appeared to want to paint his dad in a favorable light, consistently and unconvincingly denied having such feelings. In short, Mark is a pleasant, well-intentioned young man who loves his family, but whose testimony is afforded no weight.

c. Maggie's testimony

When asked for her understanding of why she was testifying at the hearing, Maggie responded: “to say that it's okay to be with my dad, and that everything I said was not true.” Maggie then testified that her disclosures of sexual abuse in 2014 were lies, and that she made the whole thing up. Specifically, Maggie reports that she was worried her stepmother Nancy and Mr. Brown would get full custody of her and her brothers, and Nancy was “mean,” “controlling” and

⁷⁰ Compare Mark testimony with R. 0055.

⁷¹ Compare Mark testimony with R. 0055.

“not very nice.” “So, I made up everything that I said to get away from my dad and my stepmom, just because I didn’t want to be around them anymore.”

Maggie testified that she and a friend concocted a plan to accuse her father of sexual abuse. Maggie explained that her ability to graphically describe alleged acts of sexual abuse was based on what she and her friend had learned in sixth-grade health class.⁷² Maggie says she didn’t know until after making these allegations that her older sister and her cousin had both previously accused Mr. Brown of sexual abuse. She also denies knowing any specific details about either girls’ disclosures.

Upon a full review of the evidence in the record, I cannot accept Maggie’s recantation as truthful or accurate. Maggie’s videotaped forensic interview does not appear consistent with a story invented from the imagination of 11-year-old girls. Maggie’s body language and hand gestures, and the events she describes all suggest a level of familiarity with sexual acts that goes beyond what she claims to have learned in watching videos in health class. Additionally, OCS’s Deb Lefebvre, who has participated in investigations of hundreds of sexual abuse cases, testified that the consistency in Maggie’s accounts of abuse between her handwritten disclosure letter and what she then described to Detective Torres undermines Maggie’s account of making up the abuse. A child who had fabricated a story, Ms. Lefebvre opined, would be unlikely to maintain such consistency.

Further, and most significant in calling into question the truthfulness of Maggie’s retraction, are the strong similarities between the abuse she described and the abuse described by Sara and by her cousin Kelly. Maggie denies ever having heard about either of their disclosures before making her own disclosure, yet she described sexual abuse very similarly to two other young girls who had previously, and unbeknownst to her, likewise disclosed such abuse by Mr. Brown. It is simply implausible that Maggie, having decided to make up a story about sexual abuse by her father, coincidentally happened to make up the same story that at least two other girls also “made up.”⁷³ It is therefore difficult to believe Maggie’s recantation.

d. Tara Moore letter and testimony

Ms. Moore, Mr. Brown’s current girlfriend, testified in support of Mr. Brown, saying that she is sure he did not sexually abuse anybody, and that she would not allow him to be around her

⁷² Maggie testimony (“In sixth grade we were learning in health class about sex. And we both went, when we were talking about it, we both told each other about it because we were learning about it at the time. So, we came up with ideas because we were watching videos, and that’s how we came up with the ideas.”).

⁷³ Maggie declined to offer an opinion about whether Sara or Kelly were “making it up too,” responding: “I don’t know.”

young daughter if she believed otherwise. Ms. Moore explained that she is very close to Maggie (who she first met last summer), that Maggie told her the allegations are untrue, and that she encouraged Maggie to write a letter recanting.

Mr. Brown also submitted a letter from Ms. Moore expressing similar sentiments. The letter describes that Ms. Moore had been dating Mr. Brown for five months, that an OCS report had been received about Mr. Brown's contact with her five-year-old daughter, and that Mr. Brown had then "had a long talk" with Ms. Moore about the allegations against him. Ms. Moore wrote that she is "well aware that in the past [Maggie and Sara] told them that their father sexually abused them and that was because of the haterage (sic) the girls had against [Nancy]."74 Ms. Moore also added: "He loves his kids including [mine]. He treats my 5-year-old as if that was one of his own daughters."75

Of note, Ms. Moore's letter indicates that Mr. Brown has explained to her that both girls lied about sexual abuse because they hated their stepmother, Nancy. But at the hearing, Mr. Brown only alleged that *Maggie* was motivated to lie about sexual abuse because she disliked Nancy. Mr. Brown claims that Sara was separately convinced to lie about sexual abuse years earlier by his first wife, Ms. Richards. Thus, Ms. Moore has neither direct knowledge of the actual events, nor even direct knowledge of Mr. Brown's current explanation for those events.

Ms. Moore was credible as to her honestly-held belief that Mr. Brown did not do the things he is accused of doing. But Ms. Moore's subjective belief about events that occurred well before she met Mr. Brown is of questionable relevance. Further, in the context of allegations that Mr. Brown sexually abused both his daughter and his stepdaughter beginning around age six, Ms. Moore's chilling description of his relationship with her own young daughter does nothing to further either the believability of his denials or the perception that Ms. Moore has appropriate judgment with regard to this situation.

e. Ms. Lefebvre's testimony

OCS called Protective Service Specialist Deb Lefebvre as its only witness, otherwise relying on the Alaska CARES videotaped interviews and reports. Ms. Lefebvre has worked for OCS since 2008, and has been based within the Alaska CARES "multidisciplinary center" since late 2009. For the past six years, she has specialized in sex abuse investigations – including four

⁷⁴ R. 0033.

⁷⁵ R. 0034.

years as a field investigator, and more than two years as a supervisor of a team of five investigators – and was credible and knowledgeable about such investigations.

Ms. Lefebvre was not involved in the 2007 or 2014 investigations in this case, but met the family and reviewed all of the prior materials as part of the 2016 investigation involving whether Ms. Moore’s daughter was potentially at risk living with Mr. Brown. As part of her investigation, Ms. Lefebvre spoke with both Maggie and Sara. When asked about her sister’s recent recantation, Sara affirmed that she stands by her own disclosures and is “not going to change [her] story.” There is no reason to doubt this account – it is consistent with Sara’s two videotaped interviews and even with Mr. Brown’s testimony (specifically, he testified that Sara genuinely believes that he sexually abused her, although he denies that he actually did so).

Ms. Lefebvre discussed her own experiences in forensic investigations, and also the broader research in this field, in explaining why children sometimes recant truthful disclosures of abuse. Ms. Lefebvre described recanting as “common,” even in cases where abuse actually occurred. She also noted that victims usually recant when they have been pressured to do so – and observed that in this case, Maggie’s written statement appeared in the context of such pressures (namely, the OCS investigation into Ms. Moore’s daughter’s safety, and impact of that investigation on the family’s current living arrangements).⁷⁶ Ms. Lefebvre testified that –in light of her discussion with Sara and with other members of the multi-disciplinary team, her review of the videos and other case materials as part of the more recent investigation, the similarity of Maggie’s allegations to Sara’s, and her overall experience investigating sexual abuse allegations – Maggie’s recanting did not affect her overall view of the allegations against Mr. Brown.

C. Both substantiation decisions are upheld

1. OCS met its burden of proving that Mr. Brown more likely than not sexually abused Sara

Sara’s 2007 and 2014 videotaped forensic interviews are compelling and credible evidence that Mr. Brown sexually abused Sara. Both interviews have the ring of truth in terms of the level of detail Sara provides, her mannerisms, and her emotional displays. Mr. Brown’s denials are simply not sufficient to overcome this compelling evidence.

⁷⁶ In response to Mr. Brown’s claim that his daughters’ disclosures should be disbelieved because of the lack of physical evidence, Ms. Lefebvre also testified that, having worked hundreds of sex abuse investigations, she can count on one hand the number of such cases where physical signs of abuse are present.

Mr. Brown focused his arguments on the lack of physical evidence. But an unremarkable physical exam is not proof that no abuse occurred.⁷⁷ And while Ms. Moore appears to hold a sincere belief that Mr. Brown could not have sexually abused his children, she has no personal knowledge of what happened between Mr. Brown and Sara or Maggie before Ms. Moore met any of them. Her testimony does not overcome the evidence in favor of the substantiation.

OCS has proven that Mr. Brown more likely than not committed sexual abuse against Sara. As noted above, sexual abuse of a young child by an adult is a *per se* harmful act. Because of the uniquely harmful nature of such abuse, no specialized showing of harm is required. Moreover, there is ample evidence here that Mr. Brown's acts harmed Sara. The substantiation is upheld.

2. OCS met its burden of proving that Mr. Brown more likely than not sexually abused Maggie

The substantiation is also upheld as to Maggie.

Balanced against Maggie's claim that she made the whole thing up are her videotaped forensic interview, and the similarities between her disclosure and that of other victims. As noted above, Maggie's videotaped interview is a credible disclosure of sexual abuse. Maggie's facial expressions, gestures, and descriptions of events were believable, and made more so by the consistency between her written and videotaped disclosures.

But most striking, and most difficult to reconcile with Maggie's recent retraction, are the strong similarities between the abuse she described and the abuse described by Sara and by Kelly. It is simply not possible that Maggie – who admits being unaware of the other victims' disclosures at the time of her own – decided to make up a story about sex abuse, and then happened to make up a story that closely mirrored that of other girls who had also disclosed similar abuse by Mr. Brown at other times.

OCS has proven that Mr. Brown more likely than not committed sexual abuse against Maggie.

IV. Conclusion

OCS's two substantiated findings of sexual abuse against Mr. Brown are AFFIRMED.

DATED: May 12, 2017.

By: Signed _____
Cheryl Mandala
Administrative Law Judge

⁷⁷ Lefebvre testimony; Ex. 4, p. 4 (expressly noting that unremarkable physical exam does not rule out abuse).

Adoption

The undersigned, by delegation of the Commissioner of Health and Social Services, adopts this Decision and Order as final under the authority of AS 44.64.060(e)(1).

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 9 day of June, 2017.

By: Signed
Name: Douglas Jones, Manager
Title: DHSS Medicaid Program Integrity

[This document has been modified to conform to the technical standards for publication.]