

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

In the Matter of )  
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M & K C ) OAH No. 18-1260-CHC  
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**DECISION**

**I. Introduction**

The Department of Health and Social Services, Office of Children’s Services (OCS), Foster Care Licensing section (“the Division”) revoked M and K Cs’ foster care license. The Division reasoned that the Cs had failed to follow licensing protocol. Specifically, OCS concluded that the Cs demonstrated a repeated pattern of lapses in judgment, withheld information, failed to report serious incidents, and inappropriately responded to a child in their care. The Cs requested an evidentiary hearing to challenge that decision.

The evidence in this case shows that despite a very challenging and stressful situation, the Cs were well-meaning and tried in good faith to provide a good home for B.J. However, because the preponderance of the evidence shows that the Cs failed to exercise good judgment, failed to comply with foster care licensing standards, and were not well-suited to the foster care role, the Division’s decision to revoke their foster care license is **AFFIRMED**.

**II. Facts**

*A. The Cs’ Foster Care License*

M and K Cs applied for a foster care license in February 2016.<sup>1</sup> The Cs, who were seeking to adopt a child, expressed a preference for a female child, 10 to 12 years old.<sup>2</sup> They had fairly specific preferences,<sup>3</sup> and on their Family Characteristics checklist, the Cs checked “No” for acceptance of most mental, psychological, and physical special needs.<sup>4</sup> The Cs were not interested in short-term placements, as their goal was to adopt.<sup>5</sup>

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<sup>1</sup> Agency Record (AR) at 161-164; Sandra Mulkey Testimony; M Cs Testimony.

<sup>2</sup> AR at 153; Sandra Mulkey Testimony; M Cs Testimony; K Cs Testimony.

<sup>3</sup> See AR at 3A (Email from M Cs to Adoptions Protective Services Specialist Jessica Veldstra, describing preferences as: a young Caucasian girl ages 9-12 years old, who does not want to embrace her “own culture or culture’s belief system (i.e. Alaskan Native),” who considers herself an American, and who “shares the same Christian faith as we do, or is open and willing to attend our church.”). Because the original agency record filed in this case had pages cut off at the bottom, the Division filed amended pages. Those pages were renumbered with the letter “A” after the page numbers.

<sup>4</sup> AR at 151-152; Sandra Mulkey Testimony.

<sup>5</sup> AR at 3A, 15, 151-152; Sandra Mulkey Testimony.

As part of the licensing application process, the Division meets with foster families at their homes.<sup>6</sup> The licensing specialist assigned to the case inspects the foster family's home for health and safety issues and goes through a Foster Home Standard-by-Standard Evaluation form with the family.<sup>7</sup> The caseworker reviews licensing regulations, expectations, and standards with the foster parents and leaves a packet of materials, including: a copy of the Alaska Resource Family Handbook; a brochure from the Alaska Center for Resource Families; a copy of the Resource Family Bill of Rights; the Financial Handbook for Newly Licensed Resource Families in Alaska; a copy of a Self-Study Course, titled the Reasonable and Prudent Parent Standard: Information for Resource Parents; and a copy of the Standard-by-Standard form.<sup>8</sup> The inspections can take anywhere from one hour to two-and-a-half hours.<sup>9</sup> Licensing Specialist Alana Medel inspected the Cs' home on June 6, 2016;<sup>10</sup> and Licensing Specialist Sandra Mulkey inspected the Cs' house on June 12, 2017 and February 21, 2018.<sup>11</sup> In addition to the home inspections, Ms. Medel met with the Cs at the OCS office several times before the Division issued the Cs' provisional license.<sup>12</sup> After her discussions with the Cs, Ms. Medel was concerned that the Cs had unreasonable expectations about foster placements and involvement of biological families with foster children, and thus, Ms. Medel explained to them that reunification (as opposed to adoption) is OCS's top priority.<sup>13</sup>

On June 22, 2016, the Division issued a provisional foster care license to the Cs for one female child, ages 9 to 12, who was available for adoption.<sup>14</sup> To maintain their foster care license, the Division required 15 hours of training per year, combined, for both Mr. Cs and Ms. Cs.<sup>15</sup> The Division referred the Cs to the Alaska Center for Resource Families for training resources, but the Cs were free to obtain training from other resources as well.<sup>16</sup> The foster care training is self-directed, with foster parents

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<sup>6</sup> See AR at 364A-393; Sandra Mulkey Testimony; Alana Medel Testimony.

<sup>7</sup> See AR at 364A-393; Sandra Mulkey Testimony; Alana Medel Testimony.

<sup>8</sup> Sandra Mulkey Testimony. See Ex. B, C, D, E, H, and AR at 364A-393.

<sup>9</sup> Sandra Mulkey Testimony.

<sup>10</sup> AR at 364A. Ms. Medel indicated on the form that she was at the Cs' house from 1:00 p.m. to 1:30 p.m. At the hearing, Ms. Medel stated that it takes much longer than 30 minutes to go through the Standard-by-Standard form and home inspections, and the Cs had a lot of questions, so she believed that either the arrival time or departure time was incorrectly noted. Alana Medel Testimony.

<sup>11</sup> Sandra Mulkey Testimony; AR at 306A, 328A.

<sup>12</sup> Alana Medel Testimony.

<sup>13</sup> Alana Medel Testimony. See also AR at 13A.

<sup>14</sup> AR at 100-102, 118; Sandra Mulkey Testimony.

<sup>15</sup> Sandra Mulkey Testimony.

<sup>16</sup> Sandra Mulkey Testimony.

choosing topics they believe will be most helpful or interesting.<sup>17</sup> The Division will sometimes recommend training, but it does not direct foster parents to take any specific training.<sup>18</sup>

Due to their specific preferences, the Cs received few calls for placement during the first year.<sup>19</sup> The Cs contacted the Division several times to express their frustration and to see how they could be more visible for placement of children who were available for adoption.<sup>20</sup> In November 2016, the Cs broadened their preferences to include two children ages 6 to 12.<sup>21</sup> In January 2017, the Cs asked to open their license to “General Foster Care” instead of “Adoption Only.”<sup>22</sup> On a form dated May 4, 2017, the Cs indicated that other than seeking only a female placement, they had no other limitations.<sup>23</sup> Although the Cs broadened their license, they could decline any placement they believed would not be a good match for their family.<sup>24</sup> Indeed, the Cs declined placements.<sup>25</sup>

*B. B.J.’s Placement and First Year with the Cs*

On May 7, 2017, OCS called the Cs for an emergency placement of a 17-year-old girl, B.J., who was days away from her eighteenth birthday.<sup>26</sup> B.J. was at a shelter after being released from the hospital and leaving another placement.<sup>27</sup> B.J.’s placement with the Cs, which was done on an emergency basis during a weekend, was intended to be short-term.<sup>28</sup> Although B.J. did not meet the Cs’ placement preferences, they decided to accept the placement because they had declined other placements and did not want to say no again.<sup>29</sup>

B.J. has a history of mental health issues, including post-traumatic stress disorder (PTSD), with psychosis, attachment disorder, and suicidal ideation.<sup>30</sup> B.J. had been in foster care for 14 years, and the Cs’ home was the 32nd foster home placement for B.J.<sup>31</sup> B.J. had overdosed on her medication three weeks before her placement with the Cs.<sup>32</sup> And B.J.’s primary caseworker, J S, who was in City A,

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<sup>17</sup> Sandra Mulkey Testimony.

<sup>18</sup> Sandra Mulkey Testimony.

<sup>19</sup> See AR at 83-85; Sandra Mulkey Testimony.

<sup>20</sup> See AR at 83-85; Sandra Mulkey Testimony.

<sup>21</sup> AR at 102; Sandra Mulkey Testimony.

<sup>22</sup> AR at 76A, 102; Sandra Mulkey Testimony.

<sup>23</sup> AR at 141.

<sup>24</sup> Alana Medel Testimony; see also AR at 2., 72A

<sup>25</sup> M Cs Testimony; K Cs Testimony.

<sup>26</sup> M Cs Testimony; K Cs Testimony; J S Testimony; Stephany Day Testimony.

<sup>27</sup> J S Testimony.

<sup>28</sup> M Cs Testimony; K Cs Testimony; J S Testimony.

<sup>29</sup> M Cs Testimony; K Cs Testimony.

<sup>30</sup> AR at 134; J S Testimony; Sandra Mulkey Testimony; K Cs Testimony.

<sup>31</sup> M Cs Testimony; K Cs Testimony; J S Testimony.

<sup>32</sup> AR at 134; J S Testimony.

talked to the Cs about B.J.’s mental health history, needs, diagnoses, and struggles the next business day after B.J. was placed with the Cs.<sup>33</sup> Ms. S encouraged the Cs to talk to B.J.’s counselor for more insight into her mental health issues.<sup>34</sup>

Independent Living Specialist, Stephany Day, also met with M Cs on May 11, 2017—during the week immediately following B.J.’s placement with the Cs.<sup>35</sup> Ms. Day went to the Cs’ house to pick B.J. up for an appointment in City B at Hospital A so that B.J. could get a prescription for anti-depressants.<sup>36</sup> Because B.J. had overslept and missed the appointment, Ms. Day used the opportunity to get to know Ms. Cs.<sup>37</sup> Because this was the Cs’ first foster placement, Ms. Day provided some orientation about her role and the different OCS workers’ roles.<sup>38</sup> Although Ms. Day did not discuss any of B.J.’s specific diagnoses with Ms. Cs during that meeting, she discussed B.J.’s mental health needs in general and how the Cs could best meet them.<sup>39</sup> Ms. Cs agreed to take B.J. to her first appointment at Hospital A.<sup>40</sup>

After B.J. turned 18, the Cs consulted with OCS, and decided to allow B.J. to continue to live with them.<sup>41</sup> The placement went smoothly, with no problems, for several months. B.J. was seeking a family, and the Cs developed a connection with her.<sup>42</sup> The Cs expressed interest in adopting B.J.<sup>43</sup>

On October 26, 2017, Ms. Cs completed a “Function Report—Adult—Third Party” form on behalf of B.J. to support B.J.’s application for disability benefits.<sup>44</sup> In that form, Ms. Cs disclosed that she had known B.J. for five months; she identified B.J.’s medications; and she described limitations B.J. has because of mental illnesses, specifically, PTSD and Reactive Attachment Disorder (RAD).<sup>45</sup>

In 2017, B.J. was diagnosed with Huntington’s Disease.<sup>46</sup> B.J.’s Huntington’s Disease diagnosis is complicated by B.J.’s history and PTSD.<sup>47</sup> B.J.’s mother died from Huntington’s Disease, and the new diagnosis was very distressful for B.J.<sup>48</sup> B.J.’s mental stability declined significantly in early

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33 J S Testimony.

34 J S Testimony.

35 Stephany Day Testimony.

36 Stephany Day Testimony.

37 Stephany Day Testimony.

38 Stephany Day Testimony.

39 Stephany Day Testimony.

40 Stephany Day Testimony.

41 M Cs Testimony.

42 M Cs Testimony.

43 J S Testimony; Stephany Day Testimony.

44 Ex. I; Stephany Day Testimony.

45 Ex. I; Stephany Day Testimony.

46 AR at 135; K Cs Testimony; Sandra Mulkey Testimony.

47 AR at 135.

48 AR at 135; K Cs Testimony.

2018.<sup>49</sup> She started experiencing delusions, paranoia, and impulsivity.<sup>50</sup> B.J. requires a number of medications, including anti-depressants, anti-psychotics, and anti-anxiety drugs, to deal with her mental health symptoms.<sup>51</sup>

During the same period when B.J.’s mental health issues were escalating, Ms. Cs’ health was also declining.<sup>52</sup> Ms. Cs started suffering grand mal seizures in 2016, and the frequency and intensity of those seizures slowly progressed.<sup>53</sup> In 2017, Ms. Cs had to stop working and driving.<sup>54</sup> In 2018, Ms. Cs’ condition started to really spiral downward—her seizures became more severe and more frequent, causing significant memory loss and leaving her incapacitated and bedridden for many days.<sup>55</sup>

On April 2, 2018, B.J. traveled to City C for a 3-month Huntington’s Disease follow up appointment at Hospital B.<sup>56</sup> Although B.J. is in tune with her diagnoses and can speak for herself about treatment plans and changes to her treatment plans, she wanted help navigating her healthcare, and she included the Cs in her medical care.<sup>57</sup> OCS paid for Mr. Cs to attend the appointment with B.J., so that he could learn more about B.J.’s complex diagnoses.<sup>58</sup> After that appointment, B.J.’s Hospital B medical providers expressed concern about Mr. Cs’ lack of judgment and behavior during the appointment.<sup>59</sup> The providers reported that Mr. Cs seemed to minimize B.J.’s diagnosis, and whenever B.J. tried to talk about how she felt, Mr. Cs would try to take over the conversation.<sup>60</sup> He downplayed B.J.’s cognitive deficits, reasoning that she was good at board games.<sup>61</sup> When the doctors were unable to stop Mr. Cs’ interruptions, he was escorted into the hallway.<sup>62</sup>

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<sup>49</sup> M Cs Testimony.

<sup>50</sup> M Cs Testimony.

<sup>51</sup> AR at 134, 287A.

<sup>52</sup> M Cs Testimony.

<sup>53</sup> M Cs Testimony; K Cs Testimony.

<sup>54</sup> M Cs Testimony.

<sup>55</sup> M Cs Testimony; K Cs Testimony.

<sup>56</sup> M Cs Testimony; K Cs Testimony; J S Testimony.

<sup>57</sup> J S Testimony; Sandra Mulkey Testimony.

<sup>58</sup> J S Testimony; K Cs Testimony.

<sup>59</sup> AR at 135; Sandra Mulkey Testimony; J S Testimony.

<sup>60</sup> AR at 135; Sandra Mulkey Testimony; J S Testimony.

<sup>61</sup> AR at 135; Sandra Mulkey Testimony; J S Testimony.

<sup>62</sup> AR at 135; Sandra Mulkey Testimony; *see also* K Cs Testimony.

B.J.'s Hospital B doctors prescribed Lorazepam to help her with panic attacks and anxiety caused by travel.<sup>63</sup> They instructed Mr. Cs to dole out the medication to B.J. as needed.<sup>64</sup> Nevertheless, B.J. filled the prescription and managed the medications on her own.<sup>65</sup>

*C. The First Protective Services Report and Investigation*

On April 26, 2018, Ms. Day sent an email to licensing specialists, Sandra Mulkey and Alana Medel, expressing concerns about the Cs as B.J.'s foster parents.<sup>66</sup> Among other concerns, (i.e., about the Cs' judgment and ability to set reasonable boundaries with B.J.), Ms. Day reported that a couple of weeks earlier, B.J. had overdosed on her anti-anxiety medication, requiring emergency treatment.<sup>67</sup> The Cs had not reported the incident to OCS.<sup>68</sup> Remarkably, the same day that Ms. Day reported the overdose, Ms. Cs sent an email to Ms. Medel, inquiring about opening the Cs' foster care license to attract more potential placements available for adoption.<sup>69</sup> Ms. Cs did not mention anything about B.J.'s overdose.<sup>70</sup> Nor did Ms. Cs mention anything about her deteriorating health.<sup>71</sup>

On May 2, 2018, OCS received a Protective Services Report (PSR) reporting B.J.'s overdose of her anxiety medication and the Cs' failure to report the incident to OCS.<sup>72</sup> The report also shared the concerns raised by B.J.'s Hospital B medical providers (i.e. that B.J. had been diagnosed with a serious medical condition, Huntington's Disease, and the Cs were ignoring the symptoms and severity of the diagnosis).<sup>73</sup> Ms. Mulkey investigated the report for the Division.<sup>74</sup> Ms. Mulkey interviewed B.J.; the Cs; and two of B.J.'s Hospital B care providers, Nurse Case Manager C W and Social Worker T S.<sup>75</sup> She also talked to B.J.'s primary case worker, J S.<sup>76</sup>

Through her investigation, Ms. Mulkey learned that B.J.'s Hospital B doctors prescribed the Lorazepam while B.J. was in City C so that B.J. could get on the airplane to fly home to City B.<sup>77</sup> B.J.

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<sup>63</sup> AR at 134.

<sup>64</sup> AR at 134; J S Testimony.

<sup>65</sup> AR at 134; J S Testimony.

<sup>66</sup> AR at 12.

<sup>67</sup> AR at 12.

<sup>68</sup> AR at 12.

<sup>69</sup> AR at 13A-15.

<sup>70</sup> AR at 13A-15.

<sup>71</sup> AR at 13A-15.

<sup>72</sup> AR at 300.

<sup>73</sup> AR at 300.

<sup>74</sup> Sandra Mulkey Testimony.

<sup>75</sup> Sandra Mulkey Testimony; AR at 133-135; 287A-299.

<sup>76</sup> Sandra Mulkey Testimony; AR at 133-135; 287A-299.

<sup>77</sup> Sandra Mulkey Testimony; AR at 134; 292-293.

had filled the Lorazepam prescription on her own and had not yet given the medicine to Mr. Cs to manage as instructed by Hospital B medical providers.<sup>78</sup> Mr. Cs confirmed that he left B.J. responsible for taking her own medications because she is an adult.<sup>79</sup> He reasoned that up to that point, there had never been any problems with her taking her medication in a correct manner.<sup>80</sup> But after B.J. and Mr. Cs returned to City B, on April 6, 2019, B.J. was really struggling with multiple stressors, depression, and her Huntington's Disease diagnosis.<sup>81</sup> She was experiencing side-effects of jerky movements and delusions from one of her anti-psychotic medications, and B.J. thought that her disease was progressing rapidly.<sup>82</sup> B.J.'s older, biological sister L had also moved in with the Cs, and her presence was adding more turmoil to an already stressful situation.<sup>83</sup> B.J. attempted suicide by taking 14 Lorazepam pills.<sup>84</sup> B.J. told Ms. Cs about the overdose, and Ms. Cs immediately contacted poison control.<sup>85</sup> Both Mr. Cs and Ms. Cs had taken medications that prevented them from driving, so L drove B.J. and Ms. Cs to Hospital C emergency room.<sup>86</sup> L reportedly texted B.J.'s primary caseworker, Ms. S, to report the incident on April 7 or 8, and B.J. told Ms. Cs that she would contact her secondary caseworker, N X.<sup>87</sup> Neither Mr. Cs nor Ms. Cs contacted OCS; instead, they relied on L or B.J. to report the incident.<sup>88</sup>

B.J. signed releases, and the Cs were involved in family therapy and safety planning.<sup>89</sup> B.J.'s medical providers recommended that the Cs lock up and manage B.J.'s medications.<sup>90</sup> Ms. S also talked to the Cs about managing B.J.'s medications.<sup>91</sup> Mr. Cs informed Ms. S that they had gotten a lockbox for the medications, and based on her conversations with Mr. Cs, Ms. S believed that the Cs understood the seriousness of the issue.<sup>92</sup>

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78 Sandra Mulkey Testimony; AR at 134; 292-293.

79 AR at 134; Sandra Mulkey Testimony.

80 AR at 134.

81 AR at 134, 292-293; K Cs Testimony.

82 AR at 293.

83 K Cs Testimony.

84 AR at 134, 293, 295A.

85 AR at 134, 293, 295A.

86 AR at 134, 293, 295A; M Cs Testimony.

87 AR at 134, 296.

88 AR at 134, 296.

89 J S Testimony.

90 J S Testimony.

91 J S Testimony.

92 J S Testimony.

On June 7, 2018, Ms. Mulkey and Licensing Specialist Michelle Gadbois met with the Cs to discuss the allegations and licensing requirements.<sup>93</sup> During that meeting, Ms. Mulkey presented a copy of the standard by standard that was presented during the Cs' inspection.<sup>94</sup> Specifically, Ms. Mulkey reminded the Cs of their responsibility to report incidents to OCS and to store B.J.'s medications in a way that prevents access.<sup>95</sup> Ms. Mulkey reminded the Cs that even though B.J. was over 18 years old, the Cs were still required to comply with foster care licensing regulations, and thus, still responsible for managing B.J.'s medications.<sup>96</sup> The Cs agreed to lock B.J.'s medications in a safe in the master bedroom and to be in charge of distributing and monitoring all of B.J.'s medications.<sup>97</sup>

After completing the investigation, the Division cited the Cs for violating 7 AAC 10.1070(c)(2) (proper storage of medication) and 7 AAC 10.9615 (reporting requirements).<sup>98</sup> But because Ms. Mulkey and Ms. Gadbois believed that the Cs had been proactive with corrective actions, and because the Cs agreed to manage B.J.'s medications, the Division did not take any enforcement action.<sup>99</sup>

*D. The Second Protective Services Report and Investigation*

On July 17, 2018, OCS received another Protective Services Report.<sup>100</sup> According to that report, B.J. bought cigarettes and was cutting herself on July 5, 2018, but the Cs did not report the incident to OCS until July 9.<sup>101</sup> Ms. Gadbois investigated the report.<sup>102</sup> Ms. Gadbois interviewed B.J., Ms. Cs, and Mr. Cs.<sup>103</sup>

Through the investigation, Ms. Gadbois learned that B.J. had asked Mr. Cs to take her to the store to get some chocolate.<sup>104</sup> On the way, they stopped to get gas. While Mr. Cs was getting gas, B.J. went into the store and bought cigarettes.<sup>105</sup> B.J. tried to hide the cigarettes and Mr. Cs got "sharp" with her, telling her that he thought they had a better relationship than that.<sup>106</sup> Mr. Cs told Ms. Gadbois that he had "rebuked" B.J. about her deception on the way to No Name Store (NNS), while in NNS, on the

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<sup>93</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 134.

<sup>94</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 134.

<sup>95</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 134.

<sup>96</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 134.

<sup>97</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 134.

<sup>98</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 136.

<sup>99</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 136.

<sup>100</sup> AR at 284A.

<sup>101</sup> AR at 285.

<sup>102</sup> AR at 213A; Michelle Gadbois Testimony.

<sup>103</sup> AR at 213A, 273-279; Michelle Gadbois Testimony.

<sup>104</sup> AR at 212A, 275A; Michelle Gadbois Testimony; K Cs Testimony.

<sup>105</sup> AR at 212A, 275A; Michelle Gadbois Testimony; K Cs Testimony.

<sup>106</sup> AR at 212A, 275A; Michelle Gadbois Testimony.



way home, and for a brief time after they got home.<sup>107</sup> When they returned home, B.J. went to her bedroom and shut the door.<sup>108</sup> Mr. Cs later knocked on B.J.'s door, and walked into the open bathroom off of B.J.'s room, where he found her cutting her wrists with a kitchen steak knife.<sup>109</sup> Mr. Cs observed superficial scrapes and red lines with faint traces of blood.<sup>110</sup> Protective Services Specialist, Janie Thomas, who visited B.J. shortly after the incident, described 5 to 7 cuts above the wrist on B.J.'s left arm as "the depth and redness of a scratch one would get if scratched by a blackberry bush."<sup>111</sup> B.J. explained that she felt like she had disappointed Mr. Cs and was punishing herself.<sup>112</sup> Mr. Cs talked to B.J. and let her know that he cares for her no matter what, and then he had her get into bed with Ms. Cs, who was sleeping and recovering from multiple seizures she had earlier that day.<sup>113</sup> Mr. Cs told B.J. and Ms. Cs to "take care of each other."<sup>114</sup> B.J. reported the incident to her Hospital B team of doctors, who told her that the incident needed to be reported to OCS.<sup>115</sup> Mr. Cs contacted OCS after B.J. told him that her Hospital B team said he needed to report the incident.<sup>116</sup> When asked why the Cs did not report the incident sooner, Mr. Cs stated that he felt like he was going from one crisis to another between his wife and B.J., and he did not think to call OCS.<sup>117</sup> Because the scratches were superficial and did not require any medical attention or first aid, Mr. Cs did not recognize the seriousness of the self-harming behavior, and he felt that he had dealt with the incident.<sup>118</sup>

Because Ms. Cs' medical issues were significantly impacting the household, the Division requested medical releases from Ms. Cs to gain a better understanding of what was going on and what Ms. Cs could reasonably do.<sup>119</sup> Ms. Cs never cooperated with the request.<sup>120</sup>

On August 16, 2018, Ms. Gadbois met with the Cs.<sup>121</sup> During that meeting, Ms. Cs told Ms. Gadbois that due to her seizure disorder, she is not really available to be involved with OCS or to

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<sup>107</sup> AR at 212A, 275A; Michelle Gadbois Testimony; *see also* K Cs Testimony.

<sup>108</sup> AR at 212A, 275A; Michelle Gadbois Testimony; K Cs Testimony.

<sup>109</sup> AR at 212A, 275A; Michelle Gadbois Testimony; K Cs Testimony.

<sup>110</sup> AR at 212A, 275A; Michelle Gadbois Testimony; K Cs Testimony.

<sup>111</sup> Janie Thomas Affidavit.

<sup>112</sup> AR at 213A, 275A; Michelle Gadbois Testimony.

<sup>113</sup> AR at 213A, 275A; Michelle Gadbois Testimony; K Cs Testimony.

<sup>114</sup> AR at 213A, 275A; Michelle Gadbois Testimony; K Cs Testimony.

<sup>115</sup> AR at 213A; Michelle Gadbois Testimony; K Cs Testimony.

<sup>116</sup> AR at 213A, 277A; Michelle Gadbois Testimony.

<sup>117</sup> AR at 213A, 276A; K Cs Testimony.

<sup>118</sup> AR at 213A, 276A; K Cs Testimony.

<sup>119</sup> Alana Medel Testimony.

<sup>120</sup> Alana Medel Testimony.

<sup>121</sup> AR at 213A, 278A; Michelle Gadbois Testimony.

provide the main care and supervision of B.J.<sup>122</sup> Ms. Cs reported that she did not want to respond to emails because they were too confusing, and she could not keep track.<sup>123</sup> Ms. Cs agreed that Mr. Cs should be the primary foster parent and that he should be responsible for communicating with OCS and managing B.J.’s medications.<sup>124</sup> Although Mr. Cs later claimed that he thought the idea was “ludicrous” given his full-time job and other responsibilities with the family,<sup>125</sup> Mr. Cs told Ms. Gadbois that Ms. Cs could not manage B.J.’s medications and he would be the main person responsible for B.J.’s medications.<sup>126</sup> Ms. Gadbois reiterated the importance of maintaining good communication with OCS.<sup>127</sup> Ms. Gadbois provided the Cs with a Plan of Care and Medical Information Form to reflect that Mr. Cs would be the primary caregiver for B.J.<sup>128</sup> Mr. Cs submitted a new completed Plan of Care form dated August 29, 2018, indicating that he would keep B.J.’s medications in the safe.<sup>129</sup>

*E. The Third Protective Services Report and Investigation*

On September 4, 2018—before the investigation for the second Protective Services Report was completed—the Cs notified B.J.’s secondary OCS caseworker, N X, that B.J. had overdosed by taking over 100 pills, and that they were on the way to the hospital.<sup>130</sup> Ms. Cs guessed that B.J. must have found the key to the safe.<sup>131</sup> Mr. X met the family at the emergency room, where B.J. was barely coherent.<sup>132</sup>

The following day, Mr. X went to the hospital and talked to the Cs.<sup>133</sup> Both Mr. Cs and Ms. Cs told Mr. X that B.J.’s overdose came as a complete surprise.<sup>134</sup> Neither Mr. Cs nor Ms. Cs could remember the exact medication, dosage, or pill quantity.<sup>135</sup> Mr. Cs reasoned that B.J. was an adult, the medications kept changing, and the Cs were not invited to attend B.J.’s medical appointments.<sup>136</sup> The

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<sup>122</sup> AR at 213A, 278A; Michelle Gadbois Testimony.

<sup>123</sup> AR at 278A.

<sup>124</sup> AR at 213A, 278A; Michelle Gadbois Testimony.

<sup>125</sup> K Cs Testimony.

<sup>126</sup> AR at 213A, 278A; Michelle Gadbois Testimony; J S Testimony; *see also* Janie Thomas Affidavit (“I believe in total I have visited the Cs home three or four times and each time, Mrs. Cs was in a bathrobe and had either just woken up or was about to take a nap. Mrs. Cs is either too tired to engage in conversation or is angry and defensive . . .”).

<sup>127</sup> AR at 278A; Michelle Gadbois Testimony.

<sup>128</sup> AR at 213A; Michelle Gadbois Testimony.

<sup>129</sup> AR at 213A, 266A; Michelle Gadbois Testimony.

<sup>130</sup> AR at 248; J S Testimony.

<sup>131</sup> AR at 248.

<sup>132</sup> AR at 248.

<sup>133</sup> AR at 245A.

<sup>134</sup> AR at 245A.

<sup>135</sup> AR at 245A.

<sup>136</sup> AR at 245A, 254.

hospital contacted B.J.’s medical providers for a list of her current medication, did a pill count, and found that B.J. had not been taking her medications as prescribed.<sup>137</sup> Later that day, Mr. Wilson talked to B.J.’s attending physician, Dr. O.<sup>138</sup> Dr. O reported that the psychiatric interviews with B.J. and the Cs were emotional.<sup>139</sup> B.J. had an emotional screaming fit, blaming everyone for her problems.<sup>140</sup> She yelled: “I lied, and they (the Cs) lied, I’ve been managing my own medicines.”<sup>141</sup> B.J.’s doctors believed that B.J. would rest better without the Cs present, and B.J.’s psychiatrist asked the Cs to leave and not return until OCS and the doctors gave them permission.<sup>142</sup>

OCS received a Protective Services Report of the incident on September 7, 2018.<sup>143</sup> That same day, Ms. Medel and OCS Family Services Supervisor Heather Karpstein attempted to interview B.J. at the hospital.<sup>144</sup> B.J.’s speech was slurred, and she appeared to still be under the influence of the medication she had taken.<sup>145</sup> So they decided to postpone the interview until B.J. was more lucid.<sup>146</sup>

On September 10, 2018, Ms. Medel returned to the hospital with OCS Protective Services Specialist Timothy Nelson to interview B.J.<sup>147</sup> Ms. Medel and Mr. Nelson asked very limited questions and mostly listened as B.J. quickly “dove right in to” her narrative about what happened on September 4.<sup>148</sup> B.J. told Ms. Medel and Mr. Nelson that she was bored in her room and started to contact friends for drugs and alcohol.<sup>149</sup> She then went upstairs and took the key to the medicine safe out of Ms. Cs’ jewelry box.<sup>150</sup> She took six pills she referred to as valium—actually Klonopin—from the safe and returned to her room, where she swallowed them.<sup>151</sup> She reported that once the pills kicked in, she started to feel depressed and suddenly wanted to die.<sup>152</sup> She went back upstairs and took the whole bottle of pills out of the safe.<sup>153</sup> Although the bottles generally hold 60 pills, she believed that

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<sup>137</sup> AR at 257.

<sup>138</sup> AR at 257.

<sup>139</sup> AR at 257.

<sup>140</sup> AR at 257.

<sup>141</sup> AR at 257.

<sup>142</sup> AR at 257.

<sup>143</sup> AR at 264.

<sup>144</sup> AR at 214A; Alana Medel Testimony.

<sup>145</sup> AR at 257; Alana Medel Testimony.

<sup>146</sup> AR at 257; Alana Medel Testimony.

<sup>147</sup> AR at 214A, 235A; Alana Medel Testimony.

<sup>148</sup> AR at 214A, 235A; Alana Medel Testimony.

<sup>149</sup> AR at 214A, 235A.

<sup>150</sup> AR at 214A, 235A.

<sup>151</sup> AR at 214A, 235A.

<sup>152</sup> AR at 214A, 235A.

<sup>153</sup> AR at 214A, 235A.

two bottles had been combined in one bottle.<sup>154</sup> She took the bottle of pills back to her room, where she swallowed them six at a time until all the pills in the bottle were gone.<sup>155</sup> B.J. reported that the pills were prescribed to be taken “as needed,” and she had not needed to take any before, so she took 120 pills.<sup>156</sup> B.J. had been talking to a friend on the phone while this was happening.<sup>157</sup> Her friend told her to yell for her mom and dad.<sup>158</sup> B.J. called for the Cs and when they came to her room, she handed the phone to Ms. Cs, and B.J.’s friend told Ms. Cs what happened.<sup>159</sup> The Cs took B.J. to the hospital, and Ms. Cs called Mr. Wilson on the way.<sup>160</sup>

During that interview, B.J. expressed concern about not being able to go back to the Cs’ house after being released from the hospital.<sup>161</sup> She reported that when she told the doctors that she was managing her own medications, she was upset that the Cs left her at the hospital, and she was not in her right mind.<sup>162</sup> She recanted her statement about managing her own medications and stated that the Cs family had been giving her medications the entire time.<sup>163</sup> Ms. Medel asked B.J. about her medication routine, and B.J. stated that Ms. Cs gives her morning and nighttime medications, and that Mr. Cs picks up her medications from the pharmacy.<sup>164</sup> She reported that Mr. Cs and the Cs’ 18-year-old daughter U have also given her medications.<sup>165</sup> She emphasized that the Cs had done nothing wrong and opined that her behavior on September 4 was “not suspicious at all.”<sup>166</sup> B.J. acted very protective of the Cs, and Ms. Medel felt that B.J.’s story sounded rehearsed.<sup>167</sup>

Ms. Medel also attempted to interview Ms. Cs on September 10, but Ms. Cs was too ill to talk to Ms. Medel.<sup>168</sup> Ms. Medel and Mr. Nelson interviewed Mr. Cs at the OCS field office on September 11, 2018.<sup>169</sup> Mr. Cs described a normal day leading up to the incident on September 4: B.J. woke him up at

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<sup>154</sup> AR at 214A, 235A.

<sup>155</sup> AR at 214A, 235A.

<sup>156</sup> AR at 214A, 235A.

<sup>157</sup> AR at 214A, 235A.

<sup>158</sup> AR at 214A, 236.

<sup>159</sup> AR at 214A, 236; *see also* AR at 239A; M Cs Testimony.

<sup>160</sup> AR at 214A, 235A.

<sup>161</sup> AR at 214A, 236; *see also* AR at 260; Alana Medel Testimony.

<sup>162</sup> AR at 215A, 236; Alana Medel Testimony.

<sup>163</sup> AR at 215A, 236; Alana Medel Testimony.

<sup>164</sup> AR at 215A, 237; Alana Medel Testimony.

<sup>165</sup> AR at 215A, 237; *see also* AR at 232A.

<sup>166</sup> AR at 215A, 237.

<sup>167</sup> AR at 215A; Alana Medel Testimony.

<sup>168</sup> Alana Medel Testimony; AR at 215A.

<sup>169</sup> AR at 230A; Alana Medel Testimony.

3:15 a.m.; they went to the gym at 5:30 a.m.; they returned to the house; and he got ready for work.<sup>170</sup> When he got home from work, he checked on B.J.<sup>171</sup> She seemed out of it, but because they got up so early for the gym, he did not think anything of it.<sup>172</sup> Ms. Cs then yelled for him to go to B.J.’s room.<sup>173</sup> That is when they discovered that B.J. had overdosed. He said it was difficult to get B.J. in the car, and he was “aggressive” with her to keep her awake, so that she wouldn’t stop breathing.<sup>174</sup> Mr. Cs shared his belief that B.J. was stashing her “valium” because the bottle only held 60 pills.<sup>175</sup> Although he had agreed to manage B.J.’s medications, when asked how often B.J. takes valium, Mr. Cs responded that he did not know.<sup>176</sup> Nor did Mr. Cs know when B.J. took her medications.<sup>177</sup> He stated that the medications were stored in a safe in Ms. Cs’ closet and that Ms. Cs and his 18-year-old daughter, U administered medication to B.J.<sup>178</sup> He and Ms. Cs assumed that B.J. took the pills that she was given.<sup>179</sup> He stated that he picked up prescriptions from the pharmacy when B.J. told him too, but he did not know what he was picking up.<sup>180</sup> Mr. Cs reported that he was not allowed at B.J.’s medication management meetings because B.J. was an adult.<sup>181</sup> He believed that a certain amount of reliance and trust had to be put on B.J.<sup>182</sup> He said that it was possible that B.J. picked up medications from the pharmacy herself.<sup>183</sup> Mr. Cs also reported that Ms. Cs’ seizure disorder left her bedridden for long periods of time after stressful situations.<sup>184</sup> He stated that during times of stress, Ms. Cs can have as many as 40 to 50 seizures a day and that her seizures “basically cause amnesia.”<sup>185</sup> When asked why he was not managing B.J.’s medications when his wife’s health was so bad, he said that he was handling a lot of

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170 AR at 230A.  
171 AR at 230A.  
172 AR at 230A.  
173 AR at 230A.  
174 AR at 230A.  
175 AR at 230A.  
176 AR at 231A.  
177 AR at 232A.  
178 AR at 232A.  
179 AR at 231A, 232A.  
180 AR at 232A.  
181 AR at 232A.  
182 AR at 232A.  
183 AR at 232A.  
184 AR at 233A.  
185 AR at 233A.

stuff.<sup>186</sup> He opined that even if they had been 100% on the medication, B.J. would have found another way.<sup>187</sup> Mr. Cs did not believe that he and his wife could meet B.J.’s needs.<sup>188</sup>

Ms. Cs called Ms. Medel on September 13, 2018.<sup>189</sup> Like Mr. Cs, Ms. Cs also described a normal day leading up to the incident on September 4.<sup>190</sup> She described B.J.’s mood that day as “peppy.”<sup>191</sup> At some point during the day, Ms. Cs went to check on B.J.<sup>192</sup> The door was locked, and B.J. was calling for Ms. Cs.<sup>193</sup> When Ms. Cs got into the room, B.J. handed the phone to her, and B.J.’s friend told Ms. Cs that B.J. had taken 100 valium.<sup>194</sup> Ms. Cs noted that B.J. had a weak pulse and short breathing.<sup>195</sup> Mr. Cs drove them to the Bartlett emergency room, where a team was waiting with a breathing tube.<sup>196</sup> When asked about the medication management, Ms. Cs reported that she kept the medications in the safe, and kept the key to the safe in two different places in her jewelry box.<sup>197</sup> She changed where in the jewelry box she kept the key, but she couldn’t move the key from the dresser in the closet because she would forget.<sup>198</sup> Everyone, including B.J., knew where the key was. When Ms. Medel asked Ms. Cs why Mr. Cs was not in charge of the key, she said, “He just wasn’t.”<sup>199</sup> Ms. Cs denied combining two bottles of the medication into one bottle. Instead, she reported that B.J.’s prescription for Klonopin had been filled at the beginning of August, and Ms. Cs threw away July’s empty bottle as B.J. had taken all of those.<sup>200</sup> According to Ms. Cs, B.J. asked Ms. Cs to add Klonopin to her morning and evening pills when needed, and she opined that B.J. must have been stashing her Klonopin.<sup>201</sup>

During her conversation with Ms. Medel, Ms. Cs also expressed concern about a potential plan to place B.J. with the Cs’ church pastor and his wife, F and O N.<sup>202</sup> For the first time, Ms. Cs reported

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<sup>186</sup> AR at 233A; Alana Medel Testimony.

<sup>187</sup> AR at 233A; Alana Medel Testimony.

<sup>188</sup> AR at 233A.

<sup>189</sup> AR at 239A; Alana Medel Testimony.

<sup>190</sup> AR at 239A.

<sup>191</sup> AR at 239A.

<sup>192</sup> AR at 239A.

<sup>193</sup> AR at 239A.

<sup>194</sup> AR at 239A.

<sup>195</sup> AR at 240A.

<sup>196</sup> AR at 240A.

<sup>197</sup> AR at 240A; Alana Medel Testimony.

<sup>198</sup> AR at 240A.

<sup>199</sup> AR at 240A; Alana Medel Testimony.

<sup>200</sup> AR at 239A.

<sup>201</sup> AR at 241A.

<sup>202</sup> AR at 241A; Alana Medel Testimony.

that B.J. was scared to be alone with Mr. N and that B.J. had alleged in February or March 2018 that Mr. N had sexually abused her.<sup>203</sup> When asked why Ms. Cs did not report the allegation of sexual abuse, she responded that the pastor is a good man and the allegation was not true.<sup>204</sup> Ms. Cs, instead, told B.J. that she could not be trusted with reality and that B.J. knew that the pastor did not hurt her.<sup>205</sup> In support of her unilateral decision that the allegation was untrue, Ms. Cs stated that B.J. was delusional and that a week earlier, B.J. had told law enforcement that a baby B.J. was babysitting had been sexually abused.<sup>206</sup> The allegation was found to be untrue.<sup>207</sup> Ms. Cs told Ms. Medel that she told B.J. that she could not make allegations like that as she could have destroyed the baby’s family.<sup>208</sup>

During the conversation with Ms. Cs, Mr. Cs got on the phone.<sup>209</sup> He reported that he had just returned from a visit with B.J., and it was awkward.<sup>210</sup> He and B.J. reportedly had a discussion about B.J.’s request to stay with the Ns.<sup>211</sup> According to Mr. Cs, B.J. told him that her “City A team” was going to get a judge to let her go to the pastor’s house.<sup>212</sup> Mr. Cs described B.J. as completely disconnected and irrational.<sup>213</sup> He said that he got “firm” with B.J., and she kept saying that the Cs don’t love her.<sup>214</sup> B.J. was escalating, and hospital staff escorted him off of the mental health unit.<sup>215</sup>

On September 17, 2018, Ms. Medel and Mr. Nelson interviewed the Cs’ 18-year-old daughter U.<sup>216</sup> U was not home when B.J. overdosed.<sup>217</sup> U visited B.J. at the hospital on September 9, 2018.<sup>218</sup> She described B.J. as unnaturally happy and out of it, and she reported that B.J. told her, “Next time I’ll get it right”—which scared U.<sup>219</sup> U did not know who usually gave B.J. her medication, but she confirmed that B.J.’s medications were kept in a safe in Ms. Cs’ closet, the key to the safe was in Ms. Cs’ jewelry box, and U had on occasion given B.J. her medications.<sup>220</sup>

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203 AR at 242A; Alana Medel Testimony.

204 AR at 242A; Alana Medel Testimony.

205 AR at 242A; Alana Medel Testimony.

206 AR at 242A; Alana Medel Testimony.

207 AR at 242A; Alana Medel Testimony.

208 AR at 242A; Alana Medel Testimony.

209 AR at 242A.

210 AR at 242A.

211 AR at 242A.

212 AR at 242A.

213 AR at 243A.

214 AR at 243A.

215 AR at 243A.

216 AR at 228.

217 AR at 228.

218 AR at 228.

219 AR at 228.

220 AR at 229.

After B.J. was released from the hospital, she was placed with another foster family in City A.<sup>221</sup> On September 19, 2018, B.J.’s primary caseworker, Ms. S met with B.J.<sup>222</sup> During that meeting, B.J. described Mr. Cs’ last visit with her at the hospital.<sup>223</sup> Mr. Cs was reportedly upset with B.J. for wanting to stay with the Mills after her release from the hospital.<sup>224</sup> According to B.J., Mr. Cs told her that if she stayed with the pastor, she would overdose again, the pastor would walk in on her corpse, he would have a heart attack, and she would be considered a murderer in the eyes of God.<sup>225</sup> The conversation was so upsetting to B.J. that Mr. Cs was escorted off the mental health unit.<sup>226</sup> B.J. also told Ms. S that the Cs were not being truthful about what happened with the pills and that they do not want anyone to know that they let B.J. manage everything—her medication and her appointments.<sup>227</sup> B.J. told Ms. S that her medications were never locked up, and she was upset that the Cs were saying that she found the key and took the medications herself.<sup>228</sup> Ms. S believed B.J. because she was visibly upset: She has a bond with the Cs, wants to live with them, and wanted to protect them.<sup>229</sup>

In or about October 2018, B.J. requested to be released from OCS custody and moved from City A to City B to an unapproved placement with the Ns.<sup>230</sup> B.J. bought her ticket and returned to City B on her own.<sup>231</sup>

On October 30, 2018, Mr. Cs sent an email to Ms. Medel inquiring about the investigation and the “Hold” status of the Cs’ foster care license.<sup>232</sup> After receiving no response from Ms. Medel, Mr. Cs re-sent the email on November 6, 2018—this time including Ms. Mulkey.<sup>233</sup> Mr. Cs opined that one of the major factors of B.J.’s removal from the Cs’ home was that Ms. Cs’ health had deteriorated, and thus, Ms. Cs was not able to give B.J. the level of care that she needed while he was at work.<sup>234</sup> He reported that Ms. Cs’ health was improving, and he believed that she was close to being capable of

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221 AR at 224A; J S Testimony.

222 AR at 224A; J S Testimony.

223 AR at 224A; J S Testimony.

224 AR at 224A; J S Testimony.

225 AR at 224A; J S Testimony.

226 AR at 224A; J S Testimony.

227 AR at 243A; J S Testimony.

228 J S Testimony.

229 J S Testimony.

230 AR at 226.

231 AR at 226. J S Testimony.

232 AR at 27.

233 AR at 27.

234 AR at 27.



caring for children.<sup>235</sup> According to Mr. Cs, Ms. Cs was on new medications, and if she had no issues through the month, they would get a notice from her doctors indicating that she is capable of caring for foster children.<sup>236</sup>

*F. The Decision to Revoke the Cs' Foster Care License*

On November 27, 2018, the Division issued a Report of Investigation/Notice of Violation for the July 17, 2018 and September 7, 2018 Protective Services Reports.<sup>237</sup> The report summarized the investigation, including summaries of all the interviews and correspondence.<sup>238</sup> The Division concluded that the Cs' responses and actions established a pattern of extremely poor judgment.<sup>239</sup> Specifically, the Division faulted the Cs for failing to report serious incidents to OCS, including, attempted suicides and alleged sexual abuse; for failing to follow the directions of OCS Foster Care Licensing; and for repeatedly demonstrating inappropriate follow-up and response to a child in State of Alaska custody with suicidal ideation.<sup>240</sup> The Division cited the Cs for violating multiple licensing regulations.<sup>241</sup>

1. 7 AAC 50.140(e)(2) – Reports – First working day report to placement worker severe distress of a child in care – as evidenced [by] Ms. and Mr. Cs not reporting B.J.'s allegation of sexual abuse by her Pastor from February or March 2018.
2. 7 AAC 50.140(d)(2) – Reports – Immediately report to placement worker attempted or threatened suicide of child in care – as evidenced by Ms. and Mr. Cs not reporting foster youth B.J.'s purposeful cutting of her arm on July 5 until July 9.
3. 7 AAC 50.400(a) – Supervision of Children in Care – A foster home shall ensure the children in care will receive responsible supervision – as evidenced by Mr. Cs putting foster youth B.J. in bed with his ill wife for them to “take care of each other” after B.J. was found cutting her own skin on July 5. Additionally, the Cs then allowed B.J. to leave the licensed home for several days spending time with her 34 year old boyfriend and staying with the Pastor and his wife. Mr. Cs stated on July 9, he had not seen B.J. for several days.
4. 7 AAC 50.200(b) – Qualifications of Foster Parents – Applicant must be of good character and reputation and have the skills to work with children, agency and community resources – as evidenced by Mr. Cs admitting on September 9, 2018 to

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<sup>235</sup> AR at 27.

<sup>236</sup> AR at 27.

<sup>237</sup> AR at 210A-222A.

<sup>238</sup> AR at 211A-218A.

<sup>239</sup> AR at 219A.

<sup>240</sup> AR at 219A.

<sup>241</sup> AR at 219A-220A; Alana Medel Testimony.

not managing foster youth B.J.'s prescribed controlled medication, having no knowledge of what medications B.J. was prescribed or how often she took them. Mr. Cs had been directed to be the parent in charge of medication management by CCLS Gadbois in a face to face meeting on July 27, 2018.

5. 7 AAC 10.1070(c)(2) – Medications – A foster home shall store medications in a manner that prevents access by unauthorized persons – as evidenced by foster youth B.J. having access to ingest 120 of her prescribed Klonopin on September 4, 2018, resulting in her hospitalization for ten days. B.J. has stated on two separate occasions that she was in charge of her own medication management.

6. 7 AAC 50.210(a) – Qualifications of Persons Having Regular Contact with Children in Foster Home – Adults and caregivers must be responsible, reputable individuals who use sound judgment – as evidenced by Ms. and Mr. Cs' failure to access appropriate medical services for B.J. after she engaged in self-harming behaviors of cutting her skin on July 5. Secondly, Ms. Cs used poor judgment when she chose not to tell OCS B.J. had made an allegation of sexual abuse in which she was the victim. Ms. Cs did not understand why she should have reported this to OCS. She stated that she believed the disclosure to be untrue and stated the alleged perpetrator of the offense was "a good man." Thirdly, Ms. Cs used poor judgment when she told B.J. she shouldn't have made an allegation of sexual abuse in regard to the child she was providing daycare for because it could ruin the child's family.

In sum, the Division concluded that the Cs failed to meet the standards for foster care licensure and revoked their Biennial foster care license.<sup>242</sup>

#### *G. The Cs' Appeal*

The Cs filed a timely appeal on November 30, 2018.<sup>243</sup> An evidentiary hearing was held before the Office of Administrative Hearings (OAH) on March 22, 2019, April 9, 2019, and April 17, 2019. The parties appeared in person. Assistant Attorney General Kimberly Allen represented the Division. In addition to the 400-page agency record, the Division presented testimony from Community Care Licensing Specialists, Sandra Mulkey and Michelle Gadbois; Community Care Licensing Specialist Supervisor, Alana Medel; Regional Licensing Manager, Yurii Miller; Protective Services Specialist, J S; and Independent Living Specialist, Stephany Day. The Division also presented affidavit testimony from Protective Services Specialist, Janie Thomas.<sup>244</sup> Attorney Chris Peloso represented the Cs. M and K Cs testified on their own behalf. The agency record was admitted into evidence with no objections.

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<sup>242</sup> AR at 219A; Alana Medel Testimony.

<sup>243</sup> AR at 209.

<sup>244</sup> The Cs waived the right to cross-examine Ms. Thomas, so under AS 44.62.470, Ms. Thomas's affidavit "shall be given the same effect as if [she] had testified orally."

After the first day of hearing on March 22, 2019, the Division submitted additional Exhibits, marked as Exhibits A through H. The Cs did not object to those exhibits, and thus, they were admitted as part of the agency record.

At the hearing on April 17, 2019, Ms. Day referred to a document that was not in the record. After hearing arguments from both parties about the admissibility of references to the document and/or the document itself, the administrative law judge (ALJ) left the record open to allow the Division to obtain a copy of the document and to file it as a potential exhibit. On April 23, 2019, the Division filed the proposed exhibit, marking the document as Exhibit A. Because the Division already submitted an exhibit marked A, and to avoid confusion, the document is re-marked as Exhibit I. Because Exhibit I had not been produced before the hearing, the ALJ gave the Cs time to review the document and file a response. The Cs do not object to the addition of the document to the agency record or its admissibility. They, instead, submitted argument about what weight the exhibit should be given. Accordingly, Exhibit I is admitted as part of the agency record with no objections.

### **III. Discussion**

#### *A. Overview of Foster Care License Revocation Hearings and the Issues in this Case*

The Division is responsible for setting and maintaining standards for licensure of foster homes that promote safe and appropriate services, reduce risk of harm to children in placement, improve the quality of care for foster children, and otherwise advance public health, safety and welfare.<sup>245</sup> Licensing regulations establish prerequisite qualifications for foster parents, including good character and reputation, an understanding of child development, the ability to exercise good judgment, and the skills to care for children who have experienced trauma, abuse, and neglect.<sup>246</sup> In addition to pre-requisite qualifications for foster parents, Community Care Licensing Specialists investigate reports of harm (i.e. Protective Services Reports) by foster parents to ensure that licensing standards are being met. Under AS 47.32.140, the Division may revoke a foster home license if a foster parent violates licensing standards or if a foster parent does not meet state requirements for licensure.<sup>247</sup> In the context of foster homes, revocation is not a punishment, it is instead, exercised for the benefit of foster children's welfare, which is the whole purpose of foster care. A foster parent may appeal the Division's decision to revoke

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<sup>245</sup> AS 47.32.010.

<sup>246</sup> 7 AAC 50.200; 7 AAC 50.210(b).

<sup>247</sup> AS 47.32.140(d)(6).

a foster care license, and the appeal of a foster license revocation is subject to procedures under the Administrative Procedures Act (AS 44.62.330 – 44.62.630 and AS 44.64.060).<sup>248</sup>

The issue here is whether the Cs violated licensing standards, and whether the Division’s findings support the decision to revoke the Cs’ license. The Division argues that it has proven that the Cs made poor decisions, violating numerous licensing regulations. In its view, the Cs’ actions demonstrate poor judgment, an inability to work with and communicate with OCS, an inability or refusal to abide by OCS licensing directions and agreements, and a lack of understanding of how to respond to difficult situations that arise with foster children. The Division maintains that its findings were enough to raise concerns about the Cs’ ability to safely care for OCS children, and thus, it asks that its license revocation be upheld.

The Cs dispute many of the Division’s factual findings and deny that they made poor decisions. They, instead, fault OCS for their failures. They claim that they were not given B.J.’s medical history before she was placed with them. They argue that they were not equipped to deal with B.J.’s special needs; that their attempts to reach out to OCS for assistance were ignored; and that OCS failed to give them guidance, training, or legal advice to deal with B.J.’s unique problems. They argue that because B.J. was over the age of 18, and their participation in her medical care was limited by HIPAA restrictions, their hands were tied. They wish to adopt a child and want to maintain their foster care license, so that they can serve as a therapeutic foster home. They ask that the Division’s decision to revoke their license be overturned, and that their foster care license be reinstated.

### *B. Burden of Proof*

The parties agree that the Division bears the burden of proof in this case. In their pre- and post-hearing briefing, the parties articulated the standard of proof as follows: “While the division’s findings must be based on a preponderance of the evidence, the final agency decision must be based on substantial evidence, which is ‘enough relevant evidence to allow a reasonable mind to adequately support such a conclusion.’”<sup>249</sup> In its Post-Hearing Brief, the Division more specifically argues, “The Division has the burden of showing that the decision it made in November 2018 to revoke the respondents’ foster care license was at the time supported by the preponderance of the evidence, and that

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<sup>248</sup> AS 47.32.150(a).

<sup>249</sup> Division’s Pre-Hearing Brief at 5 (quoting *McKittrick v. State, Public Emps, Retirement Sys.*, 284 P.3d 832, 837 (Alaska 2012)); Cs’ Prehearing Brief at 6; Cs’ Posthearing Brief at 2.

substantial evidence exists for the Office of Administrative Hearings to uphold this decision.”<sup>250</sup> In other words, the Division suggests that the OAH is limited to reviewing the Division’s decision for substantial evidence. The Division is mistaken.

Of course, the final agency decision (i.e. the final decision adopted by the Commissioner’s delegate) must be based on substantial evidence on appeal. But that is an appellate standard of review. The OAH is tasked with holding an evidentiary hearing and issuing a proposed decision.<sup>251</sup> As is the case in most Alaska administrative appeals, the decision on the proposed revocation is made with new evidence. Indeed, the parties here presented almost three days of new testimony. Therefore, it is effectively a *de novo* review of whether the Division’s decision to revoke is appropriate. If the proposed decision differs from the Division’s recommendation, the difference may not stem from any “errors” by the Division when it made its initial decision. Instead, it is simply a new decision made with a different, and often more complete, body of evidence. Under AS 44.62.460(e), “[u]nless a different standard of proof is stated in applicable law,” the Division “has the burden of proof *by a preponderance of the evidence.*”<sup>252</sup>

### C. Hearsay

The Division relies largely on documents and oral testimony that relate to statements made to others by B.J. and other witnesses (such as J X and B.J.’s medical providers) who did not testify at the hearing. Indeed, all the Division’s records summarizing interviews and documenting conversations are out-of-court statements. Many are double hearsay in that the author has recorded what another witness ostensibly told them.

Hearsay—out-of-court statements offered to prove the truth of the matter asserted—is not admissible under the Rules of Evidence, except under the various exceptions recognized by those rules.<sup>253</sup> However, the formal rules of evidence do not apply in these proceedings, and hearsay may be admissible.<sup>254</sup> Under AS 44.62.460, the standard for admissibility is whether the evidence presented “is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission

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<sup>250</sup> Division’s Closing Brief at 6.

<sup>251</sup> See AS 44.62.450; AS 47.32.150; AS 44.64.060.

<sup>252</sup> AS 44.62.460(e)(1) (emphasis added).

<sup>253</sup> See Alaska R. Evid. 801(c), 802, 803, 804.

<sup>254</sup> AS 44.62.460.

of the evidence over objection in a civil action.”<sup>255</sup> Hearsay “may be used to supplement or explain direct evidence but it is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action.”<sup>256</sup> In the Scheduling Order for this case, the ALJ warned the parties:

Any relevant evidence, including hearsay, may be admitted if it is evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, subject to the limitation regarding use of hearsay in AS 44.62.460(d). The hearsay limitation will not apply unless an objection is made at the time the hearsay is offered.

The most significant out-of-court statements here are statements that B.J. made to J S (offered through Ms. S’s testimony and through an email Ms. S authored) and statements B.J. made while in the hospital to Dr. O, who reported the statements to B.J.’s secondary caseworker J X (offered through testimony from Alana Medel and J S and through various business records authored by J X). In both instances, B.J. indicated that the Cs were not managing B.J.’s medications, and that they were lying. Although she was originally slated to testify, B.J. did not testify at the hearing. Neither party objected to hearsay testimony or other hearsay evidence presented in this case. Accordingly, those statements are admissible and will be considered.

Although the statements are admissible, the Cs raise questions about what weight should be given to hearsay statements. Certainly, multiple layers of hearsay generally diminish the overall reliability of evidence. That said, B.J.’s statements have some indicia of reliability and are corroborated by other evidence in the record. B.J., who was by all accounts groggy from the drugs in her system, first made the statements spontaneously in an emotional outburst. Her inhibitions were down. B.J. has a connection with the Cs—she wanted to live with them. Negative statements about the Cs are against B.J.’s self-interest. And although B.J.’s outburst at the hospital was secondhand information, Mr. Cs was present when B.J. made the reported statements, and he confirmed that B.J. told her medical providers that the Cs were not managing B.J.’s medications. Mr. Cs also confirmed that B.J. was emotional, claiming that B.J. only said that because she was angry at the Cs. B.J.’s out of court statements are at minimum helpful to supplement or explain other direct evidence in the record.

As for other out-of-court statements in the records, the interviewers or authors of those records, namely, Sandra Mulkey, Michelle Gadbois, Alana Medel, J S, and Stephany Day, credibly testified about their efforts to work with the Cs and their interviews or conversations with the Cs, B.J., and B.J.’s

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<sup>255</sup> AS 44.62.460(d).

<sup>256</sup> *Id.*

medical providers. They described B.J.'s and the Cs' demeanor and recounted their own impressions of the interviews and conversations. The Cs not only had the opportunity to cross-examine those witnesses, but they also provided their own testimony about events. More importantly, as noted above, although the Cs raise questions about what weight should be given to hearsay statements, neither party raised objections to hearsay testimony or other hearsay evidence presented in this case. Accordingly, those statements are admissible and have been weighed appropriately.

*D. Relevant Statutes and Regulations*

The Division found that the Cs violated multiple licensing requirements, and because of those violations, they are not suitable licensees for foster care. The Division claims that the Cs violated the following regulations:

For allegations 1 and 2, the Division cites Foster Care Licensing regulation, 7 AAC 50.140, which states in relevant part:

(d) A full time care facility shall immediately report the following incidents involving a child in care to the child's placing worker: . . . (2) attempted or threatened suicide by a child in care;

(e) A full time care facility shall report the following to the child's placing worker no later than the first working day that it is known: . . . (2) severe distress or depression of a child in care.

For allegation 3, the Division cites, 7 AAC 50.400 (a), which states:

A facility shall ensure that the children in its care will receive responsible supervision appropriate to their age and developmental needs. A facility shall provide for creation of a staffing plan, where applicable, and a plan for supervision of children. In a foster home the plan of supervision must include supervision of children by a responsible person during an absence of the foster parent.

For allegation 4, the Division cites, 7 AAC 50.200 (b), which states:

An administrator or foster parent must be of good character and reputation, have an understanding of the development of children, the ability to care for children, positive experience working with persons of different cultures, and the skills to work with children, family members, division staff, community agencies, and, if applicable, staff of the facility.

For allegation 5, the Division cites 7 AAC 10.1070(c)(2), which states in relevant part: "an entity subject to this section shall . . . (2) store medications in a manner that prevents access by unauthorized persons."

For allegation 6, the Division cites 7 AAC 50.210(a), which states in relevant part:

An adult having regular contact with children in a facility and a caregiver of any age must be a responsible individual of reputable character who exercises sound judgment.

In the Division’s view, the Cs’ responses to OCS and actions toward B.J. established a pattern of extremely poor judgment, and “given the Cs’ refusal to abide by licensing agreements, withholding of significant information about [B.J.], and refusal to work with OCS,” revocation is the only option.

*E. Findings and Analysis*

The fundamental concern here is the suitability of the Cs for a foster care role; therefore, this decision hinges more on broad themes, characteristics of the Cs, and a pattern of repeated failures, than any one incident or violation. The preponderance of the evidence shows that the Cs erred while caring for B.J. While a single proven instance of error might not, in some cases, call for the revocation of a foster home’s license, the incidents that led to the investigation here were quite serious and alarming. Moreover, the evidence and new information obtained through the investigations of those incidents raise serious doubts about the Cs’ judgment and has revealed that, specific violations aside, the Cs are not well-suited to the foster care role.

As explained below, the Cs proved that B.J.’s placement was extremely challenging, and yet they remained committed to being B.J.’s “forever family.” The Cs appear to have good intentions. However, the evidence in this case also raises serious doubts about the Cs’ judgment and shows that the Cs are not well-suited to the foster care role. In short, violations have occurred for which the department has discretion to terminate the Cs’ license, and that discretion was properly exercised here.

1. Although OCS attempted to provide guidance to the Cs, the Cs showed an inability or reluctance to work with OCS and other agencies

A foster parent must have the ability to work with OCS and other agencies (including medical providers) to care for children with difficult behaviors.<sup>257</sup> The record is replete with examples of the Cs’ failure or reluctance to work with OCS and B.J.’s medical providers.

The Cs were credible in their testimony that B.J. was a challenging placement—she turned 18 shortly after being placed with the Cs, and she has complex mental health issues. In April and May 2018, the Cs became overwhelmed with Ms. Cs’ health issues and B.J.’s special needs. As the stressors in B.J.’s life and the Cs’ home mounted, B.J. responded with self-harming behaviors, first purposefully overdosing on her anti-anxiety medication, then deliberately cutting her arm, and ultimately, taking over

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<sup>257</sup> 7 AAC 50.210(a); 7 AAC 50.200(b).



100 anti-anxiety pills in an attempt to commit suicide. Similarly, the stress caused Ms. Cs' health to deteriorate, which in turn, caused more distress for B.J. Rather than report problems and seek guidance from OCS, the Cs attempted to handle matters themselves. They attempted to justify their failures with a lack of knowledge, lack of training, or a failure on OCS's part to anticipate and respond to the Cs' needs. The Cs suggested that B.J.'s self-harming behaviors came as a complete surprise. Juxtaposed against the credible testimony from Sandra Mulkey, Michelle Gadbois, Alana Medel, J S, and Stephany Day—who tried to work with the Cs and give the Cs help and guidance—the Cs' claims that OCS failed to provide information and ignored their pleas for help, is unconvincing. Simply put, the Cs' testimony on these points was unreliable and contradicted.

Indeed, the record in this case paints a very different picture. Ms. Cs knew that B.J. was coming from the hospital, when B.J. was placed with the Cs.<sup>258</sup> Ms. S discussed B.J.'s special needs and diagnoses with the Cs shortly after B.J. was placed with them.<sup>259</sup> Ms. Day also reached out to Ms. Cs shortly after B.J.'s placement—she spent quite a long time talking to Ms. Cs about B.J.'s history and how the Cs could best meet B.J.'s needs.<sup>260</sup> B.J.'s secondary caseworker, Mr. X, had monthly contact with the Cs.<sup>261</sup> Ms. Medel and Ms. Mulkey met with the Cs on numerous occasions to remind them of their licensing obligations and responsibilities and to provide help and guidance.<sup>262</sup> Specifically, Ms. Medel and Ms. Cs reminded the Cs that they needed to maintain good communication with OCS.<sup>263</sup>

The record also shows that the Cs knew who to contact with questions, and they frequently contacted the foster care licensing section with questions about changes to their license to try to get more calls for more foster placements.<sup>264</sup> Although the Cs may not have agreed with the responses they received, Ms. Medel and Ms. Mulkey were responsive.<sup>265</sup> Despite the Cs' frequent contact with licensing, there are no records of the Cs reaching out with questions about training or seeking guidance on how to deal with any difficult situations with B.J.<sup>266</sup> Indeed, in correspondence with the licensing section in the immediate aftermath of B.J.'s first overdose, the Cs failed to even mention the overdose or

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<sup>258</sup> M Cs Testimony.

<sup>259</sup> J S Testimony.

<sup>260</sup> Stephany Day Testimony; *see also* M Cs Testimony.

<sup>261</sup> J S Testimony.

<sup>262</sup> Alana Medel Testimony; Sandra Mulkey Testimony.

<sup>263</sup> Alana Medel Testimony; Sandra Mulkey Testimony.

<sup>264</sup> *See* AR at 2A-85; M Cs Testimony; K Cs Testimony; Stephany Day Testimony.

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

any other problems or issues.<sup>267</sup> Instead, the record shows that despite all of the ongoing stressors the Cs were experiencing, they were reaching out to OCS for more foster children.<sup>268</sup>

If the Division had taken steps to revoke the Cs' license after the first investigation, the Cs' arguments and testimony that OCS failed to help them or equip them with the tools necessary to meet B.J.'s special needs might merit more consideration. However, even if the Cs were unaware of B.J.'s history before that time—and as discussed above, the weight of the evidence contradicts any such claim—there can be no doubt that they learned about B.J.'s complex mental health history after B.J. overdosed in April 2018. By that time, the Cs were certainly on notice that B.J.'s mental health was fragile, and her self-harming behavior was a serious matter. It was clear that even though B.J. was over 18 years old, she needed guidance, and the Cs needed to manage her medications.<sup>269</sup> Multiple people at OCS reached out to the Cs to give them and B.J. the support and guidance they needed. Specifically, the Division provided training resources and referred the Cs to OCS nurse Diana Grieser.<sup>270</sup> In each instance, to B.J.'s detriment, the help and guidance OCS attempted to give the Cs fell on deaf ears. Indeed, the Cs demonstrated disdain for working with OCS.<sup>271</sup>

Similarly, contrary to the Cs' testimony that they were restricted from assisting B.J. with managing her healthcare due to HIPAA provisions, the weight of the evidence shows that Mr. Cs was simply unable to work with B.J.'s medical providers. B.J. allowed, and OCS encouraged, the Cs to participate in B.J.'s medical care.<sup>272</sup> B.J. signed releases for the Cs to participate in her care.<sup>273</sup> OCS paid for Mr. Cs to travel with B.J. to her medical appointments at UW in City C so that he could gain better insight into B.J.'s complex diagnoses—in particular, the interplay between Huntington's Disease and PTSD.<sup>274</sup> However, Mr. Cs squandered the opportunity to learn more about B.J.'s diagnoses from B.J.'s UW providers.<sup>275</sup> In fact, Mr. Cs had to be escorted out of several of B.J.'s medical appointments, including the appointment at UW, not because of HIPAA issues or other confidentiality concerns, but because Mr. Cs caused disturbances or otherwise interfered with B.J.'s treatment.<sup>276</sup>

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<sup>267</sup> AR at 13A-15.

<sup>268</sup> AR at 52-55.

<sup>269</sup> AR at 52-55.

<sup>270</sup> AR at 135-136; Sandra Mulkey Testimony; Michelle Gadbois Testimony.

<sup>271</sup> AR at 135-136.

<sup>272</sup> J S Testimony.

<sup>273</sup> J S Testimony.

<sup>274</sup> J S Testimony.

<sup>275</sup> K Cs Testimony (testifying that he decided to sit in the foyer and read a book).

<sup>276</sup> AR at 135; Sandra Mulkey Testimony; J S Testimony.

Moreover, the Cs did not notify OCS of any problems with working with B.J.’s team of healthcare providers or obtaining authorization to manage B.J.’s medications until the Division investigated B.J.’s second overdose.<sup>277</sup> Even if the Cs lacked authorization to obtain B.J.’s medical information or manage her medications, the Cs were in the best position to identify that there was a problem. Rather than wait for OCS to anticipate their needs—for a purported HIPAA problem that OCS had never encountered—the Cs simply needed to contact OCS and report the specific problem, so that OCS could research the issue and work with the Cs as a team to find a solution.<sup>278</sup> Again, to B.J.’s detriment, the Cs failed to do so.

## 2. The Cs failed to comply with reporting requirements

As a child in OCS custody, there is no surprise that B.J. had a troubling history and some special needs. Effectively working with OCS to care for children with difficult behaviors, requires good judgment and communication.<sup>279</sup> Foster parents are part of a team. And reporting certain incidents within a certain period of time is a licensing requirement.<sup>280</sup> The Cs failed on all fronts.

Although the Cs’ communication failures and lapses in judgment are well documented, there are two examples that stand out most prominently. First, barely a month after the first investigation was completed—an investigation that was done in response to B.J.’s suicide attempt by overdosing on her medications—Mr. Cs caught B.J. cutting her arm with a kitchen steak knife. B.J. was “punishing” herself because she felt that she had disappointed Mr. Cs.<sup>281</sup> Despite B.J.’s fragile mental health—with a known history of self-harming behaviors—Mr. Cs did not recognize the seriousness of this behavior.<sup>282</sup> He instead focused on the superficial nature of the cuts themselves and decided that he had dealt with the situation by sending B.J. to bed with Ms. Cs, who was bedridden due to seizures that day.<sup>283</sup> The Cs did not get B.J. professionally evaluated, and despite B.J.’s clear distress, Mr. Cs failed to report the incident on the next working day as required by the licensing regulations. Instead, he reported the incident to OCS four days later and only because B.J. told him that her Hospital B team told her that the incident needed to be reported.<sup>284</sup> Had B.J. not discussed the incident with her Hospital B providers, and

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<sup>277</sup> K Cs Testimony; M Cs Testimony; J S Testimony.

<sup>278</sup> Alana Medel Testimony; Yuri Miller Testimony; Stephany Day Testimony.

<sup>279</sup> 7 AAC 50.210(a); 7 AAC 50.200(b).

<sup>280</sup> 7 AAC 50.140.

<sup>281</sup> AR at 213A, 275A; Michelle Gadbois Testimony; K Cs Testimony.

<sup>282</sup> K Cs Testimony.

<sup>283</sup> K Cs Testimony.

<sup>284</sup> K Cs Testimony.

had the providers not told B.J. that the incident should be reported, the weight of the evidence shows that Mr. Cs saw no reason to share this information with OCS. Mr. Cs attempts to explain away this failure by faulting OCS for not providing the Cs with special training about “cutting.” But a common-sense evaluation of the situation should have alerted Mr. Cs to B.J.’s distress, and a lack of specific training on this type of self-harming behavior does not excuse Mr. Cs’ poor judgment and failure to report.

The second example of the Cs’ failure to report is even more disturbing. Despite an obligation to report allegations of sexual abuse,<sup>285</sup> Ms. Cs failed to report B.J.’s allegation that the Cs’ pastor, Mr. Mills, had sexually abused B.J. It was not until about six months later—during the course of the investigation after B.J. overdosed the second time—that Ms. Cs mentioned B.J.’s allegation.<sup>286</sup> Demonstrating a complete disregard for reporting requirements and a profound lack of judgment, Ms. Cs claimed that she did not report the allegation because she believes the pastor is a good man, and she unilaterally decided that the allegation was not true.<sup>287</sup> Ms. Cs, instead, told B.J. that B.J. could not be trusted with reality and that B.J. knew that the pastor did not hurt her.<sup>288</sup> Ms. Cs did not understand why she should have reported this to OCS. Remarkably, although B.J. expressed fear of being alone with the pastor, the Cs continued to allow B.J. to go to the pastor’s house for overnight visits.

Not only do these two incidents exemplify failures to report, but they exemplify serious lapses in the Cs’ judgment. The Division repeatedly reminded the Cs about the importance of communication and instructed them on their reporting requirements, but those reminders were simply ignored until B.J.’s self-harming behavior culminated in a life-threatening overdose.<sup>289</sup>

3. Despite Mr. Cs’ agreement to manage and secure B.J.’s medications, no one was properly managing B.J.’s medications

After B.J.’s first overdose, when the Division first discovered that B.J. was left to manage her own medications, the Division cited the Cs for failing to properly store B.J.’s medication.<sup>290</sup> Although B.J.’s first overdose was a serious incident, the Division did not take any enforcement action.<sup>291</sup> Instead, the Division determined that it was a learning opportunity.

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<sup>285</sup> AS 47.17.020(a)(5); AS 47.17.290(3).

<sup>286</sup> AR at 242A; Alana Medel Testimony.

<sup>287</sup> AR at 242A; Alana Medel Testimony.

<sup>288</sup> AR at 242A; Alana Medel Testimony.

<sup>289</sup> Alana Medel Testimony; Sandra Mulkey Testimony.

<sup>290</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 136.

<sup>291</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 136.

In June 2018, Ms. Mulkey and Ms. Gadbois met with the Cs to discuss the problem.<sup>292</sup> During that meeting, Ms. Mulkey reminded the Cs of their responsibility to store and manage B.J.’s medications in a way that prevents access.<sup>293</sup> Everyone understood that although B.J. was over the age of 18, she was still in OCS custody, and the Cs were responsible for complying with the licensing regulations.<sup>294</sup> Given B.J.’s significant diagnoses and history of drug overdoses, she could not be left in control of her own medications.<sup>295</sup> The Cs agreed to lock B.J.’s medications in a safe in the master bedroom and to be in charge of distributing and monitoring all of B.J.’s medications.<sup>296</sup> As discussed above, the Cs never advised anyone at OCS that there were any problems with the plan for the Cs to manage and secure B.J.’s medications.<sup>297</sup> After meeting with the Cs and after the Cs agreed to manage B.J.’s medications, Ms. Mulkey and Ms. Gadbois believed that the Cs had been proactive with corrective actions, and they were satisfied that the Cs understood their responsibilities.<sup>298</sup>

In August 2018, after learning that Ms. Cs’ health issues were compromising her ability to provide care for B.J., Ms. Gadbois met with the Cs again.<sup>299</sup> There is no dispute that due to her seizure disorder, Ms. Cs was incapable of taking care of and supervising B.J., much less, managing B.J.’s medications.<sup>300</sup> Ms. Cs was, by her own account, unavailable—she was bedridden much of the time and suffering memory lapses.<sup>301</sup> Ms. Cs agreed that Mr. Cs should be the primary foster parent and that he should be responsible for communicating with OCS and managing B.J.’s medications.<sup>302</sup> Mr. Cs likewise agreed, telling Ms. Gadbois that Ms. Cs could not manage B.J.’s medications.<sup>303</sup> Again, despite the perfect opportunity to do so, neither Mr. Cs nor Ms. Cs reported any issues with managing B.J.’s medications.<sup>304</sup> The Cs did not tell Ms. Gadbois that they were restricted access to B.J.’s medical information or that they were not privy to changes in her medications.<sup>305</sup> Given B.J.’s history of

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<sup>292</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 136.

<sup>293</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 134.

<sup>294</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 136.

<sup>295</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 136.

<sup>296</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 134.

<sup>297</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; J S Testimony.

<sup>298</sup> Sandra Mulkey Testimony; Michelle Gadbois Testimony; AR at 136.

<sup>299</sup> Michelle Gadbois Testimony.

<sup>300</sup> M Cs Testimony; K Cs Testimony; Michelle Gadbois Testimony.

<sup>301</sup> M Cs Testimony; Michelle Gadbois Testimony; AR at 213A, 278A.

<sup>302</sup> AR at 213A, 278A; Michelle Gadbois Testimony.

<sup>303</sup> AR at 213A, 278A; Michelle Gadbois Testimony; J S Testimony; *see also* Janie Thomas Affidavit (“I believe in total I have visited the Cs home three or four times and each time, Mrs. Cs was in a bathrobe and had either just woken up or was about to take a nap. Mrs. Cs is either too tired to engage in conversation or is angry and defensive . . .”).

<sup>304</sup> Michelle Gadbois Testimony.

<sup>305</sup> Michelle Gadbois Testimony.

overdoses and her doctors' recommendations, there can be no genuine dispute that someone other than B.J. needed to be responsible for managing those medications. With Ms. Cs incapacitated, Mr. Cs was the only other option and thus, he was made the primary foster parent, responsible for managing B.J.'s medications. The evidence shows that Mr. Cs—at least verbally in August 2018—agreed to this arrangement.

Nevertheless, Mr. Cs' testimony on this subject is quite telling, and it corroborates B.J.'s hearsay statements that the Cs were not managing her medications. Despite his agreement with the Division, Mr. Cs testified that due to all of his responsibilities with his full-time job, his wife's health issues, and their autistic daughter's special needs, he thought that it was "ludicrous" to make him the primary foster parent.<sup>306</sup> He believed that B.J., as someone over the age of 18 years old, was an adult who needed to be trusted to handle her own medications.<sup>307</sup> He disagreed with the Division's instructions to keep B.J.'s medications under lock and key and to dole them out to her.<sup>308</sup> Mr. Cs did not know how often or when B.J. took her medications.<sup>309</sup> And contrary to the Cs' claim that they were restricted by HIPAA, Mr. Cs picked up prescriptions from the NNS pharmacy when B.J. told him to.<sup>310</sup> Yet he knew nothing about what he was picking up or what medications B.J. was taking for what.<sup>311</sup> Remarkably, the Cs could only account for about 60 of the more than 100 Klonopin pills B.J. took.<sup>312</sup> And when the hospital contacted B.J.'s medical providers for a list of her current medication, and did a pill count, they found that B.J. had not been taking her medications as prescribed.<sup>313</sup> In sum, it is quite clear from Mr. Cs' testimony and other corroborating evidence that Mr. Cs had no intention of complying with the Division's instructions or the verbal agreement he made with the Division in August 2018 to manage B.J.'s medications.

What the evidence does not show is also telling: neither Mr. Cs nor Ms. Cs reached out to anyone at OCS to inform them that B.J. or her doctors were excluding Mr. Cs from B.J.'s medication management appointments or that Mr. Cs needed a release to do what OCS instructed him to do.<sup>314</sup> Mr. Cs did not need any special legal advice to navigate that dilemma. If B.J.'s doctors told him that he could not participate in B.J.'s medication management meetings without a release from B.J., then he

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<sup>306</sup> K Cs Testimony.

<sup>307</sup> K Cs Testimony.

<sup>308</sup> K Cs Testimony.

<sup>309</sup> AR at 231A; K Cs Testimony.

<sup>310</sup> K Cs Testimony.

<sup>311</sup> AR at 232A; K Cs Testimony.

<sup>312</sup> K Cs Testimony; M Cs Testimony.

<sup>313</sup> AR at 257.

<sup>314</sup> K Cs Testimony; M Cs Testimony.

simply needed to contact someone at OCS and let them know that he was having problems living up to his licensing agreement.<sup>315</sup> He failed to do so.

The preponderance of the evidence shows that at best, despite his agreement with the Division, Mr. Cs let Ms. Cs, who was incapacitated, frequently bedridden, had problems with her memory, and who everyone agreed was incapable of managing B.J.'s medications, perform his responsibilities, ultimately leaving the medications accessible to B.J. Or worse, despite B.J.'s known history of overdoses, self-harming behaviors, and mental health issues, the Cs took a hands-off approach, allowing B.J. to manage her medications herself. Either way, the Cs' lackadaisical approach to "managing" B.J.'s medications resulted in her gaining access and overdosing on over 100 Klonopin pills. Given B.J.'s known history of suicide attempts through overdosing on her prescribed medications, this was a serious failure to exercise sound judgment that warrants revocation of their license.

#### **IV. Conclusion**

The Division's decision to revoke the Cs' foster care license is **AFFIRMED**.

Dated: June 12, 2019

*Signed* \_\_\_\_\_  
Jessica Leeah  
Administrative Law Judge

### **Adoption**

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

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

DATED this 29th day of July, 2019.

By: *Signed* \_\_\_\_\_  
Name: Jillian Gellings  
Title: Project Analyst  
Agency: Office of the Commissioner, DHSS

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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<sup>315</sup> Stephany Day Testimony; J S Testimony; Yurii Miller Testimony.