

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF FAMILY AND COMMUNITY SERVICES**

In the Matter of)
)
M C) OAH No. 21-1179-SAN
) Agency No.
_____)

DECISION

I. Introduction

This matter arises from a single incident of corporal punishment that spiraled out of control. M C used a belt to punish his teenage daughter B. B then began striking and kicking Mr. C , his wife intervened, and B fought with her as well. In the melee, Mr. C acted on his combat training and placed his daughter in a headlock or choke hold. But what is appropriate for combat is hardly appropriate for handling a child.

The Office of Children’s Services (“OCS”) issued a substantiated finding of physical abuse for purposes of the Child Protection Registry. At the hearing, OCS focused on the corporal punishment that initiated the incident and evidence of bruising from a physical exam the following day. But the source of bruising is unclear from the evidence. What is certain is that Mr. C employed a headlock or choke hold on his daughter and that she reported difficulty breathing and speaking and fear of greater injury. Under the circumstances, a choke hold amounted to substantial physical harm or substantial threat of substantial physical harm. Accordingly, OCS’s substantiated finding is affirmed.

II. Facts

As of April 2021, M C was serving in the Army and living on No Name Base with his wife, Z H , and their two children, ages ten and six.¹ His 16-year-old daughter, B, had also recently moved into their home. B’s entry to their home was not smooth. She had been living with her mother in Virginia, but was removed first from her home, then her grandmother’s home, then her aunt’s before a court ordered her moved to her father’s home in Alaska.² During that time B spent several months on house arrest with an ankle monitor for threatening others with physical violence.³ Despite her difficulties in Virginia, B resented leaving there, resented living with her father, and habitually threatened to call OCS on her father and step-mother when she

¹ R. 000008, 000013.

² R. 000034-35, 000044.

³ *Id.*

was not getting her way.⁴ B has a history of aggressive behavior and self-harm and was taking medication for mental health issues.⁵

Because of her recent behavioral and legal problems, Mr. C and his wife tried to keep close tabs on her activities and whereabouts.⁶

On April 16, 2021, Mr. C had instructed B to come straight home from school.⁷ When he came from work, she was not there.⁸ B had recently joined the track team and told Ms. H she had practice, though no practice was listed on the schedule.⁹ Mr. C drove to B's school where he spoke to some students who confirmed there was no track practice that day. A van then drove up and B exited the vehicle. She was not dressed for track practice.¹⁰ Mr. C drove his daughter home, warning her she would get a "butt whooping" for lying about her whereabouts and going somewhere without permission.¹¹

Mr. C considers corporal punishment to be endemic to his Hispanic and Dominican culture.¹² In keeping with that practice, he struck his daughter twice with a belt as a means of punishment.¹³

Chaos ensued. B assailed Mr. C, pushing, kicking, and hitting him in the face.¹⁴ She fell onto her knees.¹⁵ Mr. C's military combat training kicked in and as a matter of instinct, he placed B in a headlock or choke hold to subdue her.¹⁶ From Mr. C's perspective, he applied just enough pressure to control her, but did not squeeze to hurt her or stop her breathing.¹⁷ From B's perspective, she had at least some difficulty breathing and speaking and feared further harm.¹⁸ Mr. C released B then picked her up by the waist and threw her onto her bed.¹⁹ Their versions of events differ at this point — Mr. C testified that he put her in another headlock, while B stated in an interview that he held her down with one hand around her neck and the other holding

⁴ M C testimony.

⁵ R. 000039, 000050-51.

⁶ M C testimony.

⁷ R. 000012.

⁸ M C testimony.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ M C testimony; B forensic interview.

¹⁵ B forensic interview.

¹⁶ M C testimony; B forensic interview.

¹⁷ *Id.*

¹⁸ B forensic interview.

¹⁹ M C testimony; B forensic interview.

her hand to stop her from hitting him.²⁰ B reported that his hand on her neck was not as tight as the headlock, but she still had some difficulty breathing.²¹

Ms. H came into the room and got between B and Mr. C.²² B yelled obscenities at her and Ms. H struck her in the face.²³ B hit and kicked her step-mother, who hit her back, and they both pulled each other's hair.²⁴ Mr. C stepped back in disbelief.²⁵ Ms. H believed both she and Mr. C were trying to calm B down.²⁶

A medical examination the following day noted bruises and a small cut on B's head, a small, one-centimeter bruise on her neck, and bruises on her buttocks, thighs, forearms, and knees.²⁷

OCS investigated the incident and sent Mr. C notice on May 12, 2021 that it had made a substantiated finding of physical abuse.²⁸ Mr. C appealed. This matter was stayed pending an investigation the Army's Criminal Investigation Division, which resulted in an order of reprimand for Mr. C.²⁹

A hearing was held on September 9, 2022.

III. Discussion

OCS maintains a Child Protection Registry for conducting background checks for limited purposes on persons seeking to provide certain services, such as childcare.³⁰ This Registry reflects any "substantiated findings under AS 47.10 [Child in Need of Aid] or AS 47.17 [Child Protection]."³¹

Here, OCS made a single substantiated finding of substantial physical harm as described in AS 47.10.011(6).³² This statute specifies that a child may be considered a child in need of aid if:

²⁰ *Id.*
²¹ B forensic interview.
²² M C testimony; B forensic interview; R. 18 (notes from police interview of Ms. H).
²³ *Id.*
²⁴ *Id.*
²⁵ M C testimony.
²⁶ R. 000018.
²⁷ R. 000052-53.
²⁸ R. 000001-5.
²⁹ M C testimony.
³⁰ AS 47.17.040.
³¹ AS 47.17.040(a).
³² R. 000001

the child has suffered substantial physical harm, or there is a substantial risk that the child will suffer substantial physical harm, as a result of conduct by or conditions created by the child's parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to supervise the child adequately.³³

OCS has the burden here to show by a preponderance of the evidence that Mr. C caused substantial physical harm to his daughter or poses a substantial risk of substantial physical harm to her.

Mr. C argued that the April 16 incident was corporal punishment, not abuse. OCS presented evidence about the entire incident, including Mr. C's use of a belt, his use of a headlock or chokehold, and B's physical altercations with Mr. C and his wife. OCS focused particular attention on the bruising found in B's medical exam, arguing that there is a bright line rule that bruising visible the following day establishes substantial physical harm.

The Alaska legislature has declared a policy that parents have a right to discipline their children, including with "reasonable corporal discipline."³⁴ But when corporal punishment causes "substantial physical harm" or creates a "substantial risk . . . [of] substantial physical harm," it crosses the line into physical abuse.³⁵ When corporal punishment crosses that line, though, is not so simple as OCS suggests. The Alaska Supreme Court has not established a bright line rule that bruising necessarily compels a finding of substantial physical harm. During the hearing, OCS referred to Commissioner cases finding physical abuse based on evidence of

³³ AS 47.10.011(6). The OCS notice of substantiated finding articulated the legal basis for its substantiated finding as "AK Child Protection Statute 47.17.290(9) as described in: AS 47.10.011 . . ." R. 000001. As explained in *In re DS*, OAH 21-0016-SAN (Health and Social Services 2021) at 3-5, this phrasing is misleading because AS 47.17.290(9) is not "described in" AS 47.10.011 — it is a definition for "maltreatment" in the AS 47.17 chapter. The defined term "maltreatment" in AS 47.17 appears only in AS 47.17.010, which addresses reporting requirements. Statutory definitions like AS 47.17.290(9), may assist in interpreting statutes, but do not themselves provide an independent basis for liability. See, e.g., *Cent. Delta Water Agency v. Bureau of Reclamation*, 452 F.3d 1021, 1026 (9th Cir. 2006) (statutory language was "merely a definition" and therefore did not create a duty for the agency and thus plaintiffs failed to demonstrate a failure to satisfy such a duty); *Walsh v. Potomac Airfield Airport*, 31 F. App'x 818, 822 (4th Cir. 2002) (no duty of care created by statute defining hazard because "this is merely a definition of 'hazard,' not a prohibition of hazard, and imposes no duty"); *Evac, LLC v. Pataki*, 89 F. Supp. 2d 250, 256 (N.D.N.Y. 2000) (dismissing claim based on definition statute because "the provision is merely a definition and does not create a specific right enforceable through [the statutory scheme]"); *Greater St. Louis Health Sys. Agency v. Teasdale*, 506 F. Supp. 23, 36 (E.D. Mo. 1980) (statutory definition "[i]n itself does not require or preclude anything. No legal consequences flow from a definition standing alone."); *Turner v. Crime Detective*, 34 F. Supp. 8, 9 (N.D. Okla. 1940) (dismissing claim based on definition statute because it "cannot be construed as creating a cause of action, but is merely a definition"). Inartful phrasing aside, OCS's notice quoted the AS 47.10.011(6) physical abuse provision, putting Mr. C on notice that this statute was the basis for OCS's finding. The AS 47.10.011(6) physical abuse provision was the focus of OCS's evidence and argument. Accordingly, this decision addresses AS 47.10.011(6).

³⁴ AS 47.06.025(1)(B).

³⁵ AS 47.10.011(6).

bruising.³⁶ But there are also cases where bruising following corporal punishment was not sufficient evidence.³⁷ What this demonstrates is that bruising is powerful evidence, but evidence that needs to be evaluated on an individual basis for each case.

Here, the physical evidence leaves no doubt that B sustained physical injuries, but the question is at whose hand. Mr. C admitted striking B with a belt. But as Mr. C, B, and Ms. H all stated in interviews or testimony, B had other potential sources for injuries following the April 16 incident — B kicked and hit Mr. C, B fell onto her knees while striking her father, Mr. C attempt to restrain B and she fought against his restraints, Ms. H struck B across the face, and B and Ms. H fought with each other. In addition, B had a history of self-harm and was involved in sports. These facts all raise questions as to the cause of B’s bruises. The medical report discussed the potential source of one bruise on B’s forearm being consistent with a grab mark, but noted that B had reported that it was Ms. H who grabbed her.³⁸ The report neither speculates nor draws conclusions about the source of other bruises. OCS emphasized language in the medical report that some bruises had a “loop pattern,” but did not offer evidence to explain this term or what the nurse who filled out the examination form meant by it.

This decision need not resolve the cause of each bruise or whether Mr. C’s use of a belt constitutes corporal punishment or physical abuse because of a separate act by Mr. C — placing B into a headlock or choke hold. Mr. C admitted to twice putting B into a headlock consistent with a maneuver he would use in combat in the military. And while Mr. C may very well have intended only to restrain B, the means he used was not appropriate. Headlocks and choke holds have been banned by many police departments because of the high degree of risk. An Alaska Supreme Court Justice recently described a choke hold by a police officer as an example of

³⁶ *In re FE*, OAH 22-0252-SAN (Commissioner of Health and Social Services 2022); *In re JH*, OAH 19-278-SAN (Commissioner of Health and Social Services 2022); *In re SH*, OAH 20-0487-SAN (Commissioner of Health and Social Services 2021); *In re RM*, OAH 19-0073-SAN (Commissioner of Health and Social Services 2019).

³⁷ *See, e.g., In re XY*, OAH 15-0715-SAN (Commissioner of Health and Social Services 2016) at 4-5 (incident where father restrained child after he assaulted a sibling, resulting in bruising and scratches from resisting the restraint, constituted corporal punishment, not physical abuse); *In re KC G*, OAH 13-1066-SAN (Commissioner of Health and Social Services 2013) (bruising insufficient evidence because age of bruising could not be determined).

³⁸ R. 000053.

deadly force.³⁹ And between adults, the Court has held that a choke hold can be a crime of domestic violence.⁴⁰

When used on a child in particular, a headlock or choke hold can constitute substantial physical harm. A child may be found to have suffered physical harm or substantial risk of physical harm if subjected to acts described in certain criminal statutes.⁴¹ These include assault by injury or fear of injury with a dangerous instrument.⁴² A dangerous instrument includes “hands, or other body parts, or other objects when used to impede normal breathing or circulation of blood by applying pressure on the throat or neck or obstructing the nose or mouth.”⁴³ When Mr. C used his hands and arms to put B in a headlock or choke hold, it was not corporal punishment. His objective was not punishment at all; his objective was to neutralize, the same as he would an attacker in combat. But Mr. C was not in combat. He was not in a military setting. He was not dealing with an adult. B is his child. Using a headlock or choke hold on her impeded her breathing and caused fear of further harm. Mr. C’s actions are the type that have been recognized as criminal and they fall within the criminal assault statutes. Those actions alone thus support a finding of substantial physical harm or substantial risk of substantial physical harm.

Based on Mr. C’s use of a headlock or choke hold on B and the fear and difficulty breathing that she experienced, OCS met its burden to show that B suffered substantial physical harm or substantial risk of substantial physical harm.

IV. Conclusion

OCS’s substantiated finding of substantial physical abuse is affirmed.

Dated: October 6, 2022

Signed _____

Rebecca Kruse
Administrative Law Judge

³⁹ *Jones-Nelson v. State*, 512 P.3d 665, 685 (Alaska 2022) (Bolger, J., dissenting) (discussing a hypothetical use of a choke hold).

⁴⁰ *Kirk A. v. Barbara T.*, No. S-17737, 2021 WL 3076674, at *2 (Alaska July 21, 2021).

⁴¹ AS 47.10.015.

⁴² *Id.*; AS 11.41.230(a)(2); AS 11.41.220(a)(4).

⁴³ AS 11.81.900(b)(16).

Adoption

The undersigned, by delegation from the Commissioner of Family and Community 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 1st day of November, 2022.

By: *Signed* _____

Name: Chrissy Vogeley

Title: Special Assistant II

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