

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF FAMILY AND COMMUNITY SERVICES¹**

In the Matter of	)	
	)	
G. F.	)	OAH No. 22-0252-SAN
_____	)	

DECISION

I. Introduction

G. F. is the father of B. F., a minor. On January 9, 2022, Mr. F. and B. had an altercation, which resulted in B. sustaining bruising and abrasions. Following the incident, the Office of Children’s Services (OCS) became involved with the family. OCS subsequently substantiated an allegation of child maltreatment, specifically physical abuse, against Mr. F..

After a hearing and based upon a review of the evidence, this decision concludes that Mr. F. more likely than not physically abused B. by striking him, which then caused B. to be physically injured. OCS has therefore met its burden of proof and shown that the substantiated finding of physical abuse should be upheld.

II. Procedural History

This case was initiated by OCS making a substantiated finding of physical abuse against Mr. F.. Mr. F. requested a hearing to challenge the substantiated finding. A video (Zoom) hearing was held on June 8, 2022. Mr. F. was represented by attorney Elizabeth Varela. Mr. F. testified. OCS was represented by Social Services Program Officer Jennamarie Test. Carmen King, an OCS investigator, who investigated the underlying incident, testified for OCS. Dr. N. H., an advanced nurse practitioner at the Hospital A, who was qualified as an expert witness, testified for OCS.

III. Facts

B. is Mr. F.’s son. He was 12 years old at all relevant times. In October 2021, his parents found out that he had been skipping school. In early December 2021, his parents were sent a picture of him vaping. He had his privileges revoked and his telephone taken away as a result. On January 8, 2022, Mr. F. smelled a “sweet” odor in the house that he recognized as

¹ This case was originally referred to the Office of Administrative Hearings by the Commissioner of the Department of Health and Social Services. Effective July 1, 2022, the Department of Health and Social Services was divided into two separate departments, the Department of Health and the Department of Family and Community Services. The Office of Children’s Services is part of the new Department of Family and Community Services. Accordingly, the caption is changed to reflect the organizational change.

coming from someone vaping. He did not do anything at that time. The following morning, January 9, 2022, he again smelled that same smell coming from the bathroom. He unlocked the bathroom door and found B. with his phone in one hand and a vaping device in the other.²

Mr. F. testified as follows:

- He tried to grab the vaping device from B. and that B. resisted. After a “while” they both fell on the bathroom floor with Mr. F. sitting on top of B.’s backside.
- Mr. F. was trying to get B. out of the bathroom. B. was struggling and resisting. Mr. F. ended up dragging B. out of the bathroom.
- Mr. F. did not strike B. with either his open hand or his fist.
- Mr. F. attributed any bruising or other injuries to being accidentally caused by B. having to be dragged out of the bathroom by his feet and legs into a narrow hallway, which included B. hitting the door frame.³

B. was bruised following the encounter with Mr. F.. He took “selfie” photographs of the bruising and forwarded them to another student, who provided them to the school. OCS was notified of the incident on January 10, 2022.⁴

Carmen King is an OCS investigator. She was assigned to follow up on the report to OCS. She spoke to school officials and viewed the photographs that B. took. She went to the F. home on January 11, 2022. She spoke to both parents, and B.. During her conversation with B., he disclosed having been discovered vaping by his father, being sat on and hit multiple times by his father. B. confirmed that he took the pictures that were passed on to a friend. She then had B. temporarily placed with an out of the home relative.⁵

OCS had B. interviewed and medically examined on January 12, 2022. The interview was recorded on video. In the interview, B. was soft spoken, and hesitant. In his interview, he stated the following:

- He was in the downstairs bathroom in the family home. Mr. F. smelled him vaping and came into the bathroom.
- Mr. F. put him on the floor, flat on his back, and sat on his stomach.

² Mr. F.’s testimony.

³ Mr. F.’s testimony.

⁴ Ms. King’s testimony; AR 4 – 5.

⁵ Ms. King’s testimony; AR 14 – 17.

- Mr. F. started hitting him with his closed hands on B.'s upper arms and shoulder, about 15 times, causing him pain.
- No one else observed the incident. His mother, who had been out of the home at the time, came home later with the other children.
- This (being hit by Mr. F.) had never happened before. He had not seen his father striking any of the other children.
- B. told his girlfriend about the incident.
- Mr. F. told him not to tell anyone about what happened, after B. had already told people.
- He currently did not feel safe in the family home.

Dr. H. is an advanced family nurse practitioner, who has both a Master of Science in Nursing degree and a Dr. of Nursing Practice degree. She has a certification from the American Association of Nurse Practitioners as a Family Nurse Practitioner. She was qualified as an expert in forensic nursing without objection. Dr. H. physically examined B. on January 12, 2022. As part of her examination, she first reviewed B.'s video interview. The photographs, which she took as part of her exam, showed faded bruising and contusions on both his upper arms, and on the left side of his face. In her exam, "B. disclosed being punched 10-15 times on the arms by his father while sitting on his stomach," and "B. said his father also hit him on both sides of his face and that he wore a flat ring on his left hand, which he clarified was his wedding band."⁶ Dr. H.'s report stated in the "Findings and Interpretation" section:

Full [physical exam], B. has contusions on his upper arms bilaterally, as well as the left side of his face. The contusions on his right upper arm and linear abrasions suggest patterning, which may indicate that he was hit with an open hand on that side at one point, and is also consistent with B.'s description that his father wore a ring on that hand.⁷

Dr. H.'s report also stated in the "Diagnosis" section:

B. is a 12 year old male who disclosed that his father sat on his stomach and punched his arms and face 10-15 times with a closed fist after catching him using a vape. B. has extensive contusions and abrasion on both upper arms bilaterally, including linear abrasions on his right upper arm. The left side of B.'s face also has contusions. These injuries are consistent with B.'s disclosure.⁸

⁶ AR 26, 27.

⁷ AR 30.

⁸ AR 30.

Dr. H.’s testimony was consistent with her report. She went over the photographs, both the self-photographs that B. took, and the ones that she took as part of her examination. She explained what the photographs showed. She also explained that the bruising/contusions/abrasions were consistent with B. being struck rather than by him being held down, resisting, and/or being dragged out of the bathroom.⁹ This hearing was conducted by video, so that it was possible to observe Dr. H.’s demeanor. Based upon the observation of her demeanor, her consistency, and her clear answers to questions, Dr. H.’s testimony was credible.

IV. Discussion

A. Legal Framework

OCS maintains a child protection registry.¹⁰ Those reports are confidential but may be disclosed to other governmental agencies in connection with investigations or judicial proceedings involving child abuse, neglect, or custody.¹¹ At the conclusion of an investigation, OCS may find that an allegation has been substantiated. A substantiated finding is one where the available facts gathered from the initial assessment indicate that more likely than not, a child has been subjected to maltreatment under circumstances that indicate the child’s health or welfare is harmed or threatened.¹²

Alaska’s Child Protection statute, AS 47.17, defines “child abuse or neglect” to mean “physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate the child’s health or welfare is harmed or threatened thereby[.]”¹³ The statute then defines one of these terms – “maltreatment” – to mean “an act or omission that results in circumstances under which there is reasonable cause to suspect that a child may be a child in need of aid,” as defined under the separate Child in Need of Aid (CINA) statute, AS 47.10.011.¹⁴

Under AS 47.10.011(6), a child can be found to be “in need of aid” under the CINA statute if “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

⁹ Dr. H.’s testimony.

¹⁰ AS 47.17.040.

¹¹ AS 47.17.040(b).

¹² OCS Child Protection Manual, CH. 2.2.10.1 (Rev. 5/16/15), *available at*: <http://dhss.alaska.gov/ocs/Documents/Publications/CPSManual/cps-manual.pdf>.

¹³ AS 47.17.290(3).

¹⁴ AS 47.17.290(9).

child's parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to supervise the child adequately.”¹⁵

When a parent challenges a substantiated finding of abuse or neglect under the Child Protection statute, OCS has the burden of proving that the substantiation should be upheld. This burden has both a factual and a legal component. That is, OCS must prove as a matter of fact that certain conduct occurred, and as a matter of law that the conduct warrants a substantiated finding.¹⁶ OCS substantiated maltreatment by Mr. F.. Its notice, and the agency record demonstrated that it was substantiating maltreatment that was comprised of Mr. F. physically injuring B.. OCS's burden is therefore to prove that Mr. F. maltreated B. by causing him to experience substantial physical harm.

B. The Evidence

The evidence shows that B., who was only 12, was vaping at his home while in the downstairs bathroom. Mr. F., his father smelled the odor from the vaping device and opened the bathroom door. Mr. F. tried to take the vaping device away from B.. B. resisted and both ended up on the floor. B. ended up with bruises and abrasions.

Mr. F. testified that the bruising and abrasions were inadvertent and would have been the result of B. resisting Mr. F. and having to be dragging out of the bathroom by his feet and legs. B. informed OCS twice in discussions with Ms. King, one of which was the recorded video interview, and Dr. H. in his medical examination that Mr. F. punched him repeatedly. Dr. H.'s professional conclusions were that B.'s injuries were consistent with being struck and would not have been incurred by him simply resisting or being dragged out of the bathroom. As noted above, Dr. H.'s testimony was credible. Given her testimony, Mr. F.'s testimony was less credible. The weight of the evidence, which includes B.'s consistent statements to OCS and Dr. H., the photographs, and Dr. H.'s report and testimony, demonstrates that it is more likely true than not true that Mr. F. injured B., causing bruising and abrasions, by striking him.

C. Did Mr. F. Physically Abuse B.?

OCS can substantiate for physical harm to the children. Physical harm is statutorily defined as having caused physical harm to a child or a substantial risk of physical harm if the child is victim of a criminal assault (sexual and/or physical), or the unreasonable application of

¹⁵ AS 47.10.011(6).

¹⁶ *Matter of E.O.*, OAH No. 16-1407-SAN (Commissioner of Health & Soc. Svcs 2017).

physical discipline resulting in some form of physical damage, or if there is some negligent act or omission by a parent that creates a substantial risk of injury to the child.¹⁷

As found above, Mr. F. physically injured B.. This would mean that OCS has met its burden of proof to substantiate physical harm. Mr. F. argued, however, that he did not act intentionally.¹⁸ The evidence, however, shows that he struck B. multiple times. The fact that he struck B. multiple times shows that his actions were neither accidental nor inadvertent.

Mr. F. also argued that B. was not substantially harmed, and that he would therefore not be subject to substantiation for causing B. physical harm. The evidence shows that B. was physically injured. There has been no evidence presented that B. had to seek out medical attention. However, taking Mr. F.'s argument to its logical conclusion would allow a parent to repeatedly assault their child and cause bruising each time or do it in such a way that physical injuries were not apparent or required medical attention, and evade substantiation for physical harm. This is not so. As has been held in a number of Commissioner decisions on this point, hitting a child hard enough to leave a visible mark constitutes physical abuse.¹⁹

OCS has therefore met its burden of proof and substantiated that Mr. F. physically abused B.. While there is absolutely nothing in the record to suggest that Mr. F. has abused any of his children in the past, or that this was anything other than a single isolated incident, this does not change the finding that Mr. F. physically abused B. on January 9, 2022.

V. Conclusion

The evidence in this case shows that Mr. F. physically assaulted his son B. on January 9, 2022, which resulted in him being substantially physically harmed. Consequently, OCS's substantiated finding that Mr. F. physically harmed B. is AFFIRMED

Dated: July 11, 2022

SIGNED
Lawrence A. Pederson

¹⁷ AS 47.10.015; AS 11.51.100.

¹⁸ Mr. F. did not argue that his actions constituted reasonable parental discipline. *See AS 47.05.065(1)*. This decision will therefore not address that issue, except to note that this defense would be inconsistent with Mr. F.'s argument that B.'s injuries were sustained accidentally.

¹⁹ *See, e.g., In re YZ*, OAH Case No. 15-1144-SAN (Commissioner of the Dept. of Health and Social Services, 2015). This decision is available online at <https://aws.state.ak.us/OAH/Decision/Display?rec=5968>. *Also see In re TJ*, OAH Case No. 17-0160-SAN (Commissioner of the Dept. of Health and Social Services 2020) holding that striking a child in the face hard enough to leave an injury constituted physical abuse. This decision is available online at <https://aws.state.ak.us/OAH/Decision/Display?rec=6632>.

Administrative Law Judge

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 10th day of August, 2022.

By: SIGNED

Name: Chrissy Vogeley

Title: Special Assistant II

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