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TO: Gia Wesley, Office Chief OFCL/DLR

FROM: Barbara Rosenwald, former Regional Licensor - Reg. 4 OFCL/DLR

DATE: August 8, 2001

SUBJECT: Response to Counseling Memo dated June 18, 2001

On June 19, 2001 you presented me with a counseling memo addressing the way I handled a background clearance on an individual employed by Youth Care. The memo was presented to me ten days prior to my retirement from State service. After much consideration, I find it in my best interest to give you a formal response to this action.

As this counseling memo was presented to me, it was apparent that a change in working conditions and expectations was being set forth and presented to me for the first time. It was quite evident that I was being held to a practice and likewise penalized for a practice that was not previously in effect.

I know that I have been known for expressing my opinions, but I have ALWAYS been an employee who followed directions and played by the rules. For almost 31 years, whether I agreed or not, I followed the policies and procedures set forth for me to the best of my ability under the conditions provided. I was a Regional Licensor for 6 years and 9 months. No one has ever raised concerns over how I completed Criminal History Background Clearances. Because of the sheer volume and the time required to complete the process, the topic of clearances has been discussed many many times. If I was not completing the criminal history clearance process correctly, all someone had to do was tell me. I cannot do what I don't know!

The Facts (and practice):

- **I did not clear Mr. Gregory for employment.
- **I did notify the agency that there was information on this individual and requested a release of information in order to share the information with the agency. Without the second release, we cannot share the information with the provider. I have always felt it was important to keep them in the loop.
- **I did not hire Mr. Gregory.
- **I did not authorize YouthCare to hire Mr. Gregory.
- **Mr. Gregory was hired July 19, 2000. (per reading of the personnel record). The Criminal History and Background Inquiry was completed July 21, 2000 and received in the Region 4 DLR office on July 28, 2000.
- **The "glitch" in the process was the fact that a release of information had been received and not noted. I did not see this document until May 15, 2001 when I met with you and fully disclosed this piece of information. Interesting to note that two other workers had also handled these documents and not noticed this document. If I had noticed it, I would have proceeded with the task of obtaining relevant information in order to make the determination whether to deny or request a waiver.

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The HR at YouthCare, likewise, never inquired as to the status of this inquiry/clearance or informed us that a release had already been submitted.

- **YouthCare has never been timid or shy about pushing for clearances. In my work with them, I have expedited many, many, many inquiries in order for this agency to open programs and staff existin programs.
- **I am not responsible for the staff shortage that has affected the residential community and therefore impacted hiring practices.
- **It is a well known fact that the residential community has been hiring and using uncleared staff for years. I have brought this to the attention of my peers and my chain of command, up through and to the previous Division Director. I have been clear and precise to all providers that this practice is not sanctioned and their challenge, if they insist on using this practice, is to insure that these staff NEVER have unsupervised contact with children. There is no question in the minds of the providers that they are taking risks and they are liable should anything happen. Since this incident, I had an opportunity to casually ask a "big" provider "who would be liable if something happened in a program with an uncleared staff?" The provider was very clear that the liability lay with them. On another occasion, a "big" provider approached me and asked why there was no finding against the agency in regards to an incident that had occurred in a program that involved an uncleared staff. Although I did not respond to the inquiry, it was this incident with YouthCare. There is no question in my mind or the minds of the residential providers about the risks involved when they hire uncleared staff.

You highlighted several pieces of the Background Clearance Guidelines and I do wish to address these. I am very familiar with this document. On page 2 - you noted several lines under Crimes That Can Never Be Waived. In response, the crimes for Mr. Gregory were not felonies. We had a "pop" on two items - Reckless Endangerment - Gross Misdemeanor and Driving While license Susp. or Revoked - Misdemeanor. These offenses did not fall under the never to be waived category.

Granted, Reckless Endangerment is on the Disqualifying list. The guideline reads " must disqualify prospective care providers..... except when a waiver is approved by OFCL headquarters. " Because there were no clear details as to the incident that qualified as Reckless Endangerment, we were attempting to obtain the information that would allow us to determine whether we would disqualify or request a waiver on. The guideline does not state that you must disqualify before you decide whether to pursue a waiver.

You made highlights on subsequent pages that involved determining an applicants suitability, what situations require headquarters approval and how to write a waiver - all areas that I am knowledgeable and particularly strong and complete in the research, detail and written components.

I understand that the individual must be given written notification of the disqualification and likewise given a right of appeal. The practice, along with my training has been to determine whether a waiver will be requested prior to disqualifying an individual. In the meantime, these individuals ARE NOT CLEARED for unsupervised contact with children.

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Hindsight is a wonderful tool. Knowing then what we know now, we would have disqualified Mr. Gregory. We would not have considered a waiver. But, we did not have the advantage of unknown information. All we had was the information presented and we were trying to work the process.

The issue here seems to be how I did not clear him. I will accept the responsibility for oversight on the original release of information. There was no intent on my part to delay or draw out the process. I have a known record for working well with this agency in expediting clearances. BUT, I will not accept the responsibility for Youth Care hiring this individual or a break down in their system that allowed him to be unsupervised with residents.

If there is further discussion to be had on this subject, I am more than happy to meet with you.

cc: James Bulzoni, Regional Manager - Reg. 4 OFCL/DLR

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