



CHILD CARE LAW CENTER

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Questions and Answers: When Licensing Finds a Problem at Your Family Child Care Home June, 2006

1. What can I expect when a complaint investigation has been completed?

After an investigation is completed, the Licensing Analyst makes a report on form LIC 809; this form is a family child care provider's first opportunity to agree or disagree with Licensing's findings as a result of the site visit.

If a Licensing Analyst is investigating a complaint from a parent or someone else, the report will categorize the findings in one of three ways:

- (1) Substantiated, meaning that the Licensing Analyst determined that the allegation that the family child care provider violated the law or regulation is correct;
- (2) Inconclusive, meaning that the Licensing Analyst cannot determine or prove whether or not the allegation was correct; or
- (3) Unfounded, meaning that the Licensing Analyst found the allegation to be untrue.¹

All substantiated and inconclusive reports become part of a family child care provider's licensing file, which is available for review by the public. Unfounded reports are kept in the provider's confidential file, meaning that they are not available for review by the public.

If a Licensing Analyst finds a problem during a site visit, the Analyst may issue a citation or assess a civil penalty. If the violation is serious or repeated, the Analyst may initiate an "Administrative Action" such as a temporary suspension or license revocation.

2. What types of actions can Licensing take against a family child care provider?

When Licensing makes a visit or responds to a complaint, it will undertake an investigation. If Licensing finds that a family child care provider has violated licensing laws or regulations, it can take a variety of actions, depending on the severity of the problem. Licensing views some problems as being very serious, and can take an administrative action such as revoking or suspending the license.

3. What happens if Licensing finds a minor problem?

Many problems that Licensing finds in family child care homes are not serious problems that pose an immediate danger to a child in care. For example, paperwork may be missing or the food storage area may be dirty. In these less serious circumstances, Licensing may issue a citation to the provider. Sometimes Licensing also institutes a "plan of correction" to ensure that the violation is resolved and does not reoccur. However, if a less serious problem is not immediately resolved, or if problems are repeated, a more serious administrative action such as

suspending or revoking the license can be taken. Licensing may also assess a civil penalty, or fine, against a provider.² Civil penalties are usually monetary fines for failing to comply with applicable laws and regulations.³ These fines are not criminal penalties.

4. What does Licensing take into consideration when creating a plan of correction?

When Licensing concludes that a family child care provider has failed to comply with a law or regulation, Licensing notifies the provider and sets a time period for compliance. When a plan of correction is developed, Licensing should take the following factors into consideration:

- The gravity of the violation;
- The history of previous violations;
- The number of children affected by the violation; and
- The availability of equipment or personnel necessary to correct the violation.⁴

5. What happens if CCL finds a serious problem?

Licensing classifies some actions it takes as “Administrative Actions.” Licensing may take these actions when a problem is serious or a provider has not corrected or cannot correct deficiencies. For example, an Administrative Action might be taken if a child care provider were repeatedly over capacity, if there were substantiated allegations of child abuse, if a child was injured or died in a child care facility under suspicious circumstances, or if the provider’s conduct posed a risk to a child.⁵ The following are some of the most common administrative actions:

- Denial of an initial application for a license;
- Closing an unlicensed facility that is operating illegally;
- Temporary suspension of a license;
- Revocation of a license.

6. What types of problems does Licensing regard as serious?

The following are some examples of problems that are viewed to be serious. These are designated as “Type A deficiencies” and may result in a citation, or more often, in an administrative action.

- Failure to obtain a required criminal record clearance and Child Abuse Central Index check;
- Failure to follow fire safety requirements;
- Violation of a child’s personal rights;
- Not having a telephone;
- Provision of health-related services to a child that Licensing does not permit in a child care setting;
- Improper, insufficient, or dangerous food service;
- Failure to meet care and supervision requirements;
- Building and grounds that do not comply with regulations, including fences and swimming pools;
- Faulty or unsafe fixtures, furniture, equipment and supplies;
- Unavailable or unsafe water supply.⁶

7. When may Licensing revoke or suspend a family child care provider's license?

Licensing may revoke or suspend a family child care provider's license for any of the following reasons:

- Violation of certain laws, rules, or regulations;
- Aiding, abetting or permitting a violation of a law, rule or regulation;
- Conduct in the operation or maintenance of a family child care home that threatens, or is bad for, the health, morals, welfare, or safety of either a child in the child care home, or the people of the State of California;
- Conviction of certain crimes committed by the provider or a resident of the family child care home;
- Failure to comply with requirements for training in preventative health practices.⁷

If Licensing believes that a family child care provider committed any of these violations, it may, but does not have to, suspend the license immediately. Licensing immediately

suspends a license if it believes such action is necessary to protect a child from physical or mental abuse, abandonment, or any other substantial and immediate threat to health or safety.⁸

8. What happens when Licensing decides to suspend my license?

If Licensing makes a decision to suspend a license, the provider is notified of the temporary suspension and given a description of the accusation. The child care provider may appeal the decision to suspend the license.⁹ If the license is suspended, the family child care provider can no longer care for children and must post a visible notice of the suspension in the child care home; if the provider fails to post this notice, a penalty is applied.¹⁰

9. Do I have a right to appeal administrative actions taken by licensing?

Yes, a child care provider has a right to appeal the suspension, denial, or revocation of a license.¹¹ Please see the CCLC Q&A "Family Child Care Provider Appeals and Complaints With Licensing."

For more information visit the Child Care Law Center's website at: www.childcarelaw.org.

This document is intended to provide general information about the topic covered. It is believed to be current and accurate as of June/06, but the law changes often. This document is made available with the understanding that it does not render legal or other professional advice. If you need legal advice, you should seek the services of a competent attorney.

¹ DSS Evaluator Manual § 3-2635, Making the Determination: Is the Complaint Unfounded, Inconclusive or Substantiated? (Transmittal No. 03RM-08, Aug. 2003), pp. 50-52.

² CAL. HEALTH & SAFETY CODE § 1597.56

³ DSS Evaluator Manual § 1-0030, Definition of Civil Penalties (Transmittal No. 03RM-14, Dec. 2003) p. 7, (<http://cclid.ca.gov/res/pdf/03RM-14ENFORCEMENT.pdf> / For more information about policies and procedures surrounding assessment of civil penalties, *see*, § 1-0040 (Civil Penalties General Statement) p. 12 and § 1-0045 (Categories of Civil Penalties) p. 12. *See also*, DSS Evaluator Manual § 2-700, Collection of Civil Penalties (Transmittal No. 03RM-09, Nov. 2003), for payment options.

⁴ CAL. HEALTH & SAFETY CODE § 1597.56

⁵ DSS Evaluator Manual § 1-0030, Glossary (Transmittal No. 03RM-14, Dec. 2003) p. 6, (<http://cclid.ca.gov/res/pdf/03RM-14ENFORCEMENT.pdf>).

⁶ DSS Evaluator Manual § 3- 1560, Family Child Care Home Annual Visit Protocol, (Transmittal No. 04RM-03, March 2004) p. 16) <http://cclid.ca.gov/res/pdf/04RM-03ANNUALLICENSEFEES.pdf>.

⁷ CAL. CODE REGS. tit. 22, § 102402(a); CAL. HEALTH & SAFETY CODE § 1596.885.

⁸ CAL. CODE REGS. tit. 22, § 102402(b)

⁹ CAL. HEALTH & SAFETY CODE § 1596.886; CAL. CODE REGS. tit. 22, §§ 102402(c) & (d). 102402.1(c), *See also*, form LIC 9058.

¹⁰ CAL. HEALTH & SAFETY CODE § 1596.8895.

¹¹ CAL. CODE REGS. tit. 22, § 102402.1 (c); CAL. HEALTH & SAFETY CODE § 1596.842(b)(1).