

**BEFORE THE
DEPARTMENT OF SOCIAL SERVICES
STATE OF CALIFORNIA**

In the Matter of:)	No. 7896191001
)	
CHINWENDU MGBAFILIKE)	OAH No. L-9610193
1682 West Arrow Hwy, #214)	
Upland, CA 91786)	99 CDSS 16
)	
Respondent.)	
<hr/>		

PROPOSED DECISION

On March 20, 1997, in San Diego, California, Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Debra L. Ashbrook, Senior Staff Counsel, represented complainant.

Respondent was present and represented by J. Marvin Hassan, Esq., Law Offices of Hassan & Associates.

Evidence was received, the record remained open for receipt of written closing argument. On April 3, 1997, complainant's Points and Authorities in Support of Admission of Evidence and Closing Argument was filed and marked Exhibit "16", Respondent's Response as to Admission of Certain Evidence and Closing Argument was filed on April 22, 1997 and marked Exhibit "A". On April 28, 1997, complainant's Reply to Respondent's Response as to Admission of Certain Evidence and Closing Argument was filed and marked Exhibit "17". Thereafter, the record was closed, and the matter was submitted.

On May 23, 1997, the record was re-opened; during a telephonic conference, complainant offered Exhibit 2A, supplemental certified court document; without objection by respondent, Exhibit 2A was admitted into evidence. On the same date, the record was closed, and the matter was submitted.

FINDINGS OF FACT

I

Martha Lopez filed Accusation No. 7896191001 against Chinwendu Mgbafilike (respondent), dated August 7, 1996, and First Amended Accusation, dated January 9, 1997, in her official capacity as Deputy Director, Community Care Licensing Division, Department of Social Services, State of California (Department).

Respondent filed his Notice Defense, dated September 25, 1996, requesting a hearing in this matter.

II

From December 20, 1995 through mid-April 1996, respondent was employed by Wilene's Re-Growth Center, Inc. (licensee) at its licensed group home, doing business as Wilene's Re-Growth Center, Inc., located at 13800 Shadow Drive, Fontana, California 92335 (facility).

III

By letter, dated June 19, 1996, the Department notified the licensee and respondent that respondent was prohibited from continuing employment at the facility, from being present in the facility and from having contact with clients of the facility.

By letter, dated June 29, 1996, respondent requested a hearing to appeal the Department's denial of his employment in the facility.

IV

In February 1995, respondent was married to Andrea Mgbafilike, and they were living separate and apart. On February 1, 1995, respondent returned to their home to retrieve some of his personal items. When he arrived, his wife was asleep; Victim #1 (his stepdaughter, who was 10 years-old in February 1995) was getting ready for school; and Victim #3 (his stepson, who was two years old in February 1995) was also in the home. Victim #2 felt three forceful taps from a hand on her forehead. When she awoke, she saw her husband standing over her. Respondent grabbed her by the neck, forcing her to get out of bed.

Victim #1 heard her stepfather and mother and went to see what was going on. She observed her stepfather with a VCR in his hand, holding it as if he was going to strike her mother with it. Respondent threw down the VCR and grabbed Victim #1 by the neck. Victim #2 yelled to Victim #1 to call 911 for the police. While she was on the telephone, respondent rushed downstairs and grabbed the telephone from Victim #1, disconnecting it as he took the telephone from her, impeding her ability to contact emergency services. Respondent then threw the telephone at Victim #1. He returned upstairs, grabbing his wife by the neck, as she held Victim #3. Respondent grabbed Victim #3 and threw him down on the bedroom floor.

As a result of Victim #1's call, a deputy from the San Bernardino County Sheriff's Department was dispatched to respondent's home in response to the call from his stepdaughter.¹ When he arrived, Officer Khalfani found the door to the home partially open, and he entered. Respondent was walking around. Officer Khalfani explained that he was in the residence in response to the 911 call from a juvenile female. Respondent denied that he had a fight with anyone and explained that he came to the home to get his personal items. Officer Khalfani asked respondent to be seated in the living room. Respondent was cooperative during this investigation.

Officer Khalfani found Victim #2 outside in the front yard; she was crying and trembling. As he spoke with Victim #2, Officer Khalfani observed that she had red marks that appeared to be slightly swollen around her neck. When he located Victim #1, she was also crying and very upset.

As a consequence of the foregoing, respondent was arrested, and criminal charges were filed against him.

V

On February 28, 1995, in the Superior and Municipal Court of California, County of San Bernardino, in the case entitled The People of the State of California v. Chinwendu Nnubaife Mgbafilike, Case No. MCH 03144, upon his plea of nolo

¹ The deputy who responded to the call was A. Henderson. Prior to the day of the hearing in this matter, he had changed his name to Akili Khalfani and was employed as a police officer by the Los Angeles Police Department. Hereinafter, all references to this law enforcement officer will be as Officer Khalfani.

contendere, respondent was convicted of a violation of Penal Code sections 273.5(a)(willful infliction of corporal punishment on his spouse) and 273a(2)(willful harm or injury to a child).

Initially, there was ambiguity about the charge of which respondent was convicted. According to Exhibits 2 and 2A, respondent was convicted of Penal Code section 273a(2). However, this statute was amended and renumbered, effective January 1, 1994, prior to respondent's conviction. Based upon the clarification obtained from the District Attorney's office that prosecuted respondent, the misdemeanor complaint in respondent's case alleged that his child endangerment was "under circumstances and conditions other than those likely to produce great bodily injury or death"; therefore, his conduct was a violation of Penal Code section 273a(b) (willful harm or injury to a child) rather than 273a(2).

VI

As a consequence of the conviction, set forth in Finding V, the court ordered respondent to serve 270 days in the San Bernardino County Jail, suspended the sentence for a period of two (2) years and conditional and revocable release granted on condition that respondent, among other things:

A. pay a fine of \$100.00 to the Victim Restitution Fund by June 1, 1995;

B. attend a 52-week Anger Control Class, cooperate with Joanne Nunez, Program Coordinator, and submit proof of completion to the court by May 1, 1996;

C. not initiate any contact (letter or telephone) with victim without written permission from the court; and

D. not annoy, harass, molest or contact the victims.

VII

Explaining his conviction, set forth in Finding VI, respondent asserts that he entered the plea of nolo contendere to the charge against him, based upon the advice of his public defender; his private attorney was unavailable because the judge denied his motion for a continuance of the proceeding.

This argument is rejected. The issue of respondent's guilt may not be re-litigated in this administrative proceeding.

Respondent's entry of the plea of nolo contendere in his criminal case is conclusive evidence of guilt upon which the administrative law judge must rely. Arneson v. Fox (1980) 28 Cal.3d 440; 170 Cal.Rptr. 778.

VIII

On or before August 14, 1995, respondent returned to his wife's home, attempting to resume their marital and familial relationship. Respondent admits that he did not obtain the court's permission prior to resumption of his relationship with his family, as ordered by the court on February 28, 1995.

IX

On the night of August 14, 1995, Victim #2 and respondent had an argument about caring for the children. During this time, he came out of the bedroom into the living room, without clothes on. He began to hit her in the face with what she believed was his fists, knocking her onto the couch. He picked up a sandal and started hitting her with it in the head, face and body. She kept trying to get away from him, and he dragged her into the bedroom by her hair and legs while hitting her with the sandal. He continued to hit her, at least 10 times or more. As he continued to hit her, Victim #2 screamed, and he yelled at her to stop screaming.

As a consequence of the battering by respondent, Victim #2 sustained injuries to her head, arms, legs and body.

X

Victim #1 cried and asked respondent not to hurt her mother. Respondent then told Victim #2 and his stepchildren that if anyone left the house or said anything about what happened that everyone was going to have a bullet in his/her head.

The Department did not establish that respondent threatened to physically beat Victim #1 and/or Victim #3.

XI

Respondent was nude during the commission of the acts, set forth in Finding IX, and he committed the acts in the presence of Victim #1 and Victim #3.

XII

The Ontario Police Department dispatched officers to investigate a 911 call about a female screaming and a male beating his family. As the family heard the police at the door, respondent told the children that if they said anything about what happened that they would be taken from their mother and would never see her again.

XIII

Officer Kathy Janzen (Officer Janzen) was one of the officers dispatched to 1724 S. Pleasant Avenue, Ontario, California, to investigate the reported domestic violence. Upon arrival, she noticed that it was quiet and all lights were turned out. She knocked on the door several times loudly, with her hand and flashlight. Initially, there was no response. Officer Janzen walked around the house and heard Victim #2 crying through an open window. She returned to the front door and yelled at least twice "this is the Ontario Police Department; open the front door". Finally, she yelled, "open the door or we are coming in". Officer Janzen then heard respondent reply, "okay, give me a minute, I have to get dressed".

Finally, respondent opened the door. When the officers asked respondent if everything was okay, he answered "yes". He told the officers that his wife and stepchildren were fine and initially would not allow the police officers to enter the home. These statements were later determined to be false.

XIV

After some discussion with the police officers, respondent allowed them to enter the home to conduct their investigation. He admitted to them that there was a gun under a red heart shaped pillow, located at the foot of the bed in the master bedroom. The law enforcement officers found the weapon in the place described by respondent, an area accessible to the children.

The gun was a Glock, nine millimeter, semi-automatic firearm. At the time that the officers found it, there were two full 15-round magazines, one of which was loaded into the weapon. It was later determined that the gun was unregistered.

The evidence did not establish whether respondent or his wife brought the unregistered gun into the home and placed it under the pillow, accessible to the children. However, respondent was aware of its location.

XV

Officer Janzen described Victim #2's physical condition and she used Exhibit 6 to assist her. This is a series of 26 photographs taken of Victim #2 by officer Janzen as part of her investigation of this incident. These photographs demonstrate that Victim #2 was involved in a struggle in that they show that she had cuts and bruises on her body and a print from the sandal on her arm consistent with the pattern of the sandal found by Officer Janzen.

XVI

As a consequence of his conduct, set forth in Findings VIII and IX, a criminal complaint was filed against respondent. However, the criminal charges were later dismissed.

XVII

Respondent disregarded the emotional or physical best interests of children for whom he had a duty of care including, but not limited to, the behaviors set forth in Findings X, XI, XII and XIV.

XVIII

On December 5, 1995, when respondent applied for a position with the licensee, he did not inform the licensee that he had a pending criminal action for inflicting corporal injury on his spouse. The Department failed to establish that respondent had a duty, responsibility and/or obligation to notify the licensee of the pending criminal action against him or that respondent knew or should have known that he should disclose this information when he completed his application.

XIX

As part of the criminal records clearance process, the Department did not receive the necessary clearance for respondent and notified the licensee that she must request an exemption in order for him to continue working in one of her facilities. As part of this exemption process, she was required

to submit a letter from respondent. This letter submitted by respondent is dated May 1, 1996. In this letter, he attempted to explain the behavior that led to his conviction, set forth in Findings IV, V and VI. Respondent's letter is misleading in that respondent does not disclose his conviction; and his explanation is inconsistent with the evidence in this case in that he omitted and/or misrepresented facts.

XX

As set forth in Finding III, by letter, dated June 29, 1996, respondent appealed the Department's denial of his exemption. In this letter, he attempts to justify this conviction, explaining that he did not have adequate representation when he entered his plea of no contest. He further explains that he completed the anger management classes, that he has been under psychological treatment since his traumatic incident and that he did not harm anyone but himself.

Respondent's June 29 letter is misleading in that he does not clearly inform the Department that there were two separate incidents, omits the significant facts of both incidents and minimizes his involvement. He fails to realize and/or accept responsibility for his abuse of his stepchildren and/or his wife when he states that he hurt no one but himself. Though he completed the 52-week anger management class, he offered no evidence to establish that he completed it within the time frame ordered by the court or that he has ever entered therapy to help him handle this type of situation in the future.

XXI

Respondent denies that he had any culpability for the two incidents of domestic violence that occurred in 1995, despite his conviction and the observations of the law enforcement officers who investigated the allegations. He testified that he regrets the August incident and wishes that he had walked away.

Prior to the Department's termination of his employment, for more than four months, his performance was satisfactory. He appealed the Department's decision because he has completed some college courses and hopes to become a juvenile counselor working with troubled youth. Prior to working at the facility, respondent did an internship at Wasco State Prison, working with juveniles between the ages of 7 and 17 years.

XXII

The conduct described in Findings IV, VIII, IX, X, XI, XII, XIII and XIV reveals that respondent has demonstrated an unwillingness or inability to comply with the law or the terms of his probation.

XXIII

Respondent has engaged in conduct which is inimical to the health, morals, welfare or safety of the people of the State of California, as set forth in Findings IV, V, VI, VIII, IX, X, XI, XII, XIII, XIV, XV, XVII, XIX, XX, XXI and XXII.

DETERMINATION OF ISSUES

I

Complainant seeks to prohibit respondent from being employed in, being present in, or having contact with the clients of, any facility subject to the jurisdiction of the Department because he has been involved in two incidents of spouse abuse, one of which also involved child abuse; further, he failed to adequately disclose this information to the Department.

II

The Department established by a preponderance of evidence that respondent was involved in two incidents of spouse abuse, one of which involved child abuse. The August 1995 incident occurred during a time that the court had ordered respondent not to be around his family without court approval and while respondent was taking his anger management classes. Had respondent complied with the court's Order, clearly the second incident would not have occurred.

Respondent's conviction required the Department to terminate respondent's employment in the facility. The Department could grant an exemption if he presented substantial and convincing evidence to support a reasonable belief that he is now rehabilitated. Respondent failed to do so.

III

Respondent is hopeful that he will become a juvenile counselor, working with troubled youth, a group of vulnerable children. One who works with these children must be patient, loving and understanding. An argument can be made that respondent has been involved in domestic violence, and no evidence was offered to establish that he has engaged in violent behavior with those other than his family; therefore, it is not likely that he would have such a violent reaction with troubled juveniles.

IV

Respondent continues to deny his role and minimizes his involvement in these incidents. He accepts no responsibility for his misconduct and his disobedience of the court's Order not to be around his family without court approval. Though respondent completed the 52-week anger management class, he did not do so within the time frame ordered by the court. In addition, he was involved in, what appeared to be, a more violent incident, while taking the classes. He has not established that he would comply with the Department statutes and regulations. Until respondent accepts responsibility for his misconduct and takes appropriate action to control his anger, the quality of his character remains open to question. An exemption is not justified at this time.

V

Pursuant to Health and Safety Code sections 1522 and 1558(a)(3) and title 22, California Code of Regulations, section 80019(a) and (f)(3), the conviction set forth in Findings IV, V and VI constitutes grounds to prohibit respondent from being employed in, being present in or having contact with the clients of any facility subject to the jurisdiction of the Department.

VI

As a consequence of the conduct set forth in Findings IV, V, VI, VIII, IX, X, XI, XII, XIII, XIV, XV, XVII, XIX, XX, XXI and XXII, cause exists to prohibit respondent from being employed in, being present in or having contact with the clients of any facility subject to the jurisdiction of the Department pursuant to Health and Safety Code section 1558(a)(2) and title 22, California Code of Regulations, section 80019(a) and (f)(3).

ORDER

I

The Order of the Department of Social Services, dated June 19, 1996, denying respondent an exemption is affirmed.

II

Respondent Chinwendu Mgbafilike is prohibited from being employed in, residing in, being present in, or having contact with the clients of any facility subject to the jurisdiction of the Department of Social Services.