

September 18, 2012

Nancy Tierney
2804 Sunrise Drive
Blair, NE 68008

Dear Ms Tierney:

This letter is written to request that you submit to Marsha Wandersee in the Licensure Unit by return mail, within the next seven (7) days, your current License to operate as a Family Child Care Home I in the State of Nebraska. This request is being made since said License has been revoked, effective September 17, 2012, by the Notice of Revocation issued on August 31, 2012 by Joann Schaefer, MD, Chief Medical Officer and Director, Division of Public Health, Department of Health and Human Services.

If you have any questions, please contact Child Care Licensing at (402) 471-9302.

Sincerely,



Helen L. Meeks, Administrator
Licensure Unit

HLM/dcp

cc: Child Care Licensing

**NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA**

IN THE MATTER OF:)
)
THE OPERATING FAMILY CHILD CARE HOME I) NOTICE OF REVOCATION
OF NANCY TIERNEY)

LICENSED LOCATION: 2804 SUNRISE DRIVE, BLAIR, NE, 68008

NOTICE:

Nancy Tierney (hereinafter referred to as "Tierney") is hereby notified that the Nebraska Department of Health and Human Services, Division of Public Health (hereinafter referred to as "Department") intends to revoke Tierney's Operating Family Child Care Home I License for violation of the following:

AUTHORITY:

Nebraska Revised Statutes, section 71-1919 provides that "the Department may ... take disciplinary action against a license issued under the Child Care Licensing Act on any of the following grounds:

(1) Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the act;

(4) Conduct or practices detrimental to the health or safety of a person served by or employed at the program;" ...

Nebraska Revised Statutes, section 71-4304, provides: "After January 1, 1970, swimming pools shall have equipment and shall be operated so as to comply with the minimum sanitary and safety requirements provided in section 71-4302. After such date, no swimming pool shall operate until it has received a permit from the Department of Health and Human Services." ...

391 NAC 4-001.04 Suspension or Revocation: "The Department may initiate suspension or revocation proceedings under any of the following circumstances: ...

2. When a licensee has violated a regulation(s) so as to create a situation which places children at substantial risk;

6. When a child in care dies at the facility;

17. When a licensee has violated any regulation; ..."

391 NAC 6-001 Provider: "The child care provider shall assume responsibility for providing adequate and appropriate supervision at all times children are in attendance. Any designated substitute shall have the same responsibility for providing adequate and appropriate supervision. Ultimate responsibility for supervision will be with the child care provider." (Page 3, Standard 6, Family Child Care Home Standards, Rev. 4/12)

“The child care provider shall report the following changes to the Nebraska Department of Health and Human Services: ..., household composition, ...” (Page 3, Standard 13, Family Child Care Home Standards, Rev. 4/12)

“The child care provider shall report to the Nebraska Department of Health and Human Services within 24 hours or next business day when the following conditions occur within the child care program: the death of any child; any accident to children which requires hospitalization; or treatment at a medical facility.” (Page 3, Standard 14, Family Child Care Home Standards, Rev. 4/12)

391 NAC 6-004.01 in pertinent part: “The child care provider and/or household members shall not engage in or have a history of behavior injurious to or which may endanger the health or morals of children.” (Page 4, Standard 23, Family Child Care Home Standards, Rev. 4/12)

391 NAC 6-007.05 Water Safety: “If children are allowed to use above-ground or in-ground swimming pools, the following conditions will be met:

- a. Written permission from parents is available for review.
- b. Equipment needed to rescue a child or adult will be readily accessible.
- c. The child care provider shall comply with all Nebraska Department of Health and Human Services ... requirements regarding swimming pools.” (Page 9, Standard 75, Family Child Care Home Standards, Rev. 4/12)

“The child care provider shall accompany and directly supervise the children during swimming and wading activities.” (Page 9, Standard 76, Family Child Care Home Standards, Rev. 4/12)

391 NAC 6-007.08 Fences: “The child care provider shall accompany and supervise children under age two in fenced play areas. Children age two and older must be supervised at all times in the fenced play area.” (Page 10, Standard 88, Family Child Care Home Standards, Rev. 4/12)

FACTS AND FINDINGS:

Tierney is the licensee of an operating Family Child Care Home I. This program is licensed for a maximum of 10 children, ages six weeks to 13 years of age, 7:00 a.m. to 6:00 p.m., Monday through Friday. This program has been licensed since November 10, 1983.

On August 9, 2012, Department staff as well as an investigator with the Blair Police Department conducted an investigation of Tierney’s program in regard to a death of a child on August 8, 2012 who was enrolled in Tierney’s program. This child had been enrolled for approximately one year. Interviews were conducted with Tierney, Mr. Tierney, daughter and household member, Devin, and daughter Shawna, and two day care children who were present on August 8, 2012. Tierney’s mother, Mary Rasmussen, was present on August 8, 2012; however, she was not interviewable.

The facts are as follows:

- Tierney’s home is a triple split level design with a set of stairs leading down to a bedroom, laundry room and bathroom. Another set of stairs goes to the top level where the other bedrooms and bathrooms are located. The main level includes the living room, dining room, kitchen and family

room. The family room has sliding glass doors that lead onto a deck. On the northeast side of the deck, is an above ground swimming pool which is four feet deep. The top of the swimming pool is level with the deck. The deck entrance to the pool is accessed by swinging double gates which swing open inward toward the residence. The gates are anchored with hinges to the deck. The two gates are secured together in the center with a "U" shaped sliding pin which must be draped over a hasp with an eyelet and secured with the combination padlock. Also attached to the deck is a ladder which leads into the swimming pool. The deck was built adjacent to the swimming pool.

- Eight children were present on August 8, 2012: the 16-month-old; a seven-month-old, a two-year-old, a three-year-old, a four-year-old, a five-year-old, a six-year-old and an eleven-year-old.
- Children were fed their morning snack on the deck and then were brought inside to wash their hands and play. Ms. Rasmussen was at the dining room table. Tierney went to the top level of the home; however, the telephone rang and Tierney returned to the main level to answer it. The telephone call was in regard to Tierney's mother who Tierney went to speak to during the telephone call at the dining room table. Upon completion of the call, Tierney stated she went back upstairs to use the bathroom. Devin then received a telephone call from her nephews (Tierney's grandchildren) to pick them up to come over to play. Devin went upstairs to tell Tierney that she was leaving to pick up the nephews (Tierney's grandchildren). As Devin got to the main level, she noticed the two-year-old at the sliding glass doors which was opened approximately one foot. As she started to close the door, she noticed that the gate to the swimming pool was open. Devin went to close and lock the gate when she discovered the 16-month-old in the pool. Devin pulled the child from the pool and took the child to Tierney who was still on the top level of the home. Tierney began CPR while Devin called 911.
- The swimming pool had been used the night of August 7, 2012 by Tierney's daughter, Shawna, and Tierney's grandchildren. Shawna was unsure if she had closed and locked the gate. Based on Devin's demonstration as to how the lock was to be secured, it appeared that the lock had not been secured properly.
- Information obtained from interviews conducted with the two children present on August 8, 2012 revealed that the two-year-old child in care was often trying to open and close the patio door.

The Department has determined that the above regulations were violated by Tierney, in that Tierney failed to ensure that the gate leading to the swimming pool was secured and that she also failed to ensure that the sliding glass doors had been secured prior to leaving children unsupervised on the main level of the home. This lack of supervision allowed a child to get outside alone and into the swimming pool. Tierney also failed to report this accident to the Department within 24 hours or next business day as required.

Further, it was substantiated that Ms. Rasmussen has been a household member for approximately five weeks at the program' however, Tierney did not report this change in household composition to the Department as required.

Tierney stated during the interview conducted on August 9, 2012 she allowed children in care to use the swimming pool. Children's records were reviewed and only one parent had given permission for their child(ren) to use the pool; however, Tierney does not have a permit to operate a swimming pool and as a result the pool cannot be used by children in care.

Based on the facts presented above, the Department is revoking Tierney's Family Child Care Home I license located at 2804 Sunrise Drive, Blair, Nebraska, 68008. Tierney must send her Family Child Care Home I license to Marsha Wandersee at the address listed below seven (7) days after this action becomes final.

BE ADVISED:

That according to Nebraska Revised Statutes, section 71-1922, the action in this Notice shall become final on September 17, 2012, which is fifteen days after the mailing of this Notice unless the Department, within such fifteen-day period, receives a written request for a hearing. The license shall continue in effect until the final order of the director if a hearing is requested. If the director does not receive such request within such fifteen-day period, the action of the Department is final.

If you decide to request a hearing, your written request for hearing must be received by the Department no later than September 17, 2012, which is fifteen days after the mailing of this Notice. It should be addressed to:

Marsha Wandersee, for DHHS
Children's Services Licensing
Licensure – Division of Public Health
P.O. Box 94986
Lincoln, NE 68509-4986

If you request a hearing, you will be notified of the time, date and place of the hearing and other pertinent information, by separate notice. On the basis of such hearing, the director will affirm, modify or rescind the determination of the Department. Be advised that pursuant to Nebraska Revised Statutes, section 71-1920, upon completion of any hearing held, the director may impose any or a combination of any of the following: probation, suspension, revocation, civil penalty, restrictions of new enrollment, restrictions or other limitations on the number of children or the ages of the children served in the program, or other restrictions or limitations on the type of service provided by the program. On the basis of the hearing, a modification by the director may include sanctions important to your program, up to and including the loss of your license.

Nebraska Revised Statutes, section 71-1911, provides that a person who has had their "license suspended or revoked other than for nonpayment of fees shall not operate or offer to operate a program for or provide care to any number of children until the person is licensed pursuant to this action." In addition, section 71-1920, (2), states that "a person who has had a license revoked for any cause other than nonpayment of fees shall not be eligible to reapply for a license for a period of two years."

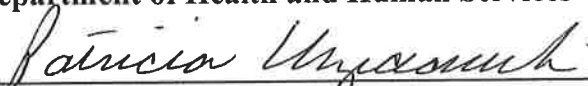
Nebraska Revised Statutes, section 71-1923 of the Child Care Licensing Act, provides that "a licensee may voluntarily surrender the license issued under the Child Care Licensing Act at any time, except that the Department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the Department has initiated disciplinary action against the licensee."

Title 391 of the Nebraska Administrative Code, section 4-001.04, also provides that the "licensee shall not transfer the license to a household member or current staff member while a ...revocation action is still pending."

In addition, Title 391 of the Nebraska Administrative Code, section 3-001.08, provides that "amended applications will not be processed whenever a negative license action is pending."

Dated: August 31, 2012

Joann Schaefer, M.D.
Chief Medical Officer
Director, Division of Public Health
Department of Health and Human Services


By: Patricia Urzedowski, Administrator
Children's Services Licensing
Division of Public Health – Licensure Unit
Nebraska Department of Health and Human Services
P.O. Box 94986
Lincoln, NE 68509-4986

CERTIFICATE OF SERVICE

COMES NOW, the undersigned and certifies that on the 31st day of August, 2012, a copy of the foregoing **NOTICE OF REVOCATION** was sent by certified and first class United States mail, sufficient postage prepaid to Nancy Tierney, 2804 Sunrise Drive, Blair, Nebraska, 68008.

