

**SAMPLE:**  
**NEGATIVE ACTION RECOMMENDATION: Denial**

January 14, 2016

Ms. Emily Piper, Commissioner  
Minnesota Department of Human Services  
Office of Inspector General  
Licensing Division  
P.O. Box 64242  
St. Paul, MN 55164-0242

Attention: Regina Wagner, Director  
Licensing Division

Re: Mr. and Ms. Applicant  
Child Foster Care  
1000 Compliance Lane  
Metropolis, MN 12345

Dear Commissioner Piper:

It is the recommendation of the Family County Human Services Department that the child foster care application of Mr. and Ms. Applicant, 1000 Compliance Lane be denied due to the following rule and statute violations:

**Minnesota Statutes, section 245A.05 DENIAL OF APPLICATION.**

(a) The commissioner may deny a license if an applicant or controlling individual:

- (1) fails to comply with applicable laws or rules;
- (2) knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license or during an investigation;
- (3) has a disqualification that has not been set aside under section 245C.22 and no variance has been granted;
- (4) has an individual living in the household who received a background study under section 245C.03, subdivision 1, paragraph (a), clause (2), who has a disqualification that has not been set aside under section 245C.22, and no variance has been granted; or
- (5) is associated with an individual who received a background study under section 245C.03, subdivision 1, paragraph (a), clause (6), who may have unsupervised access to children or vulnerable adults, and who has a disqualification that has not been set aside under section 245C.22, and no variance has been granted.

(b) An applicant whose application has been denied by the commissioner must be given notice of the denial. Notice must be given by certified mail or personal service. The notice must state the reasons the application was denied and must inform the applicant of the right to a contested case hearing under chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612. The applicant may appeal the denial by notifying the commissioner in writing by certified mail or personal service. If mailed, the appeal must be postmarked and sent to the commissioner within 20 calendar days after the applicant received the notice of denial. If an appeal request is made by personal service, it must be received by the commissioner within 20 calendar days after the applicant received the notice of denial. Section 245A.08 applies to hearings held to appeal the commissioner's denial of an application.

#### **Minnesota Statutes section 245A.04 APPLICATION PROCEDURES.**

Subd. 6. **Commissioner's evaluation.** Before issuing, denying, suspending, revoking, or making conditional a license, the commissioner shall evaluate information gathered under this section. The commissioner's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the applicant or license holder.

The commissioner shall evaluate the results of the study required in subdivision 3 and determine whether a risk of harm to the persons served by the program exists. In conducting this evaluation, the commissioner shall apply the disqualification standards set forth in chapter 245C.

Subd. 7. **Grant of license; license extension.**

(e) The commissioner shall not issue a license if the applicant, license holder, or controlling individual has:

(1) been disqualified and the disqualification was not set aside...

#### **Minnesota Statutes, section 245C.03 BACKGROUND STUDY; INDIVIDUALS TO BE STUDIED.**

Subd. 1. **Licensed programs.** (a) The commissioner shall conduct a background study on:

- (1) the person or persons applying for a license;
- (2) an individual age 13 and over living in the household where the licensed program will be provided;
- (3) current or prospective employees or contractors of the applicant who will have direct contact with persons served by the facility, agency, or program;
- (4) volunteers or student volunteers who will have direct contact with persons served by the program to provide program services if the contact is not under the continuous, direct supervision by an individual listed in clause (1) or (3);
- (5) an individual age ten to 12 living in the household where the licensed services will be provided when the commissioner has reasonable cause;
- (6) an individual who, without providing direct contact services at a licensed program, may have unsupervised access to children or vulnerable adults receiving services from a program, when the commissioner has reasonable cause . . .

#### **Minnesota Statutes, section 245C.14 DISQUALIFICATION.**

Subd. 1. **Disqualification from direct contact.** (a) The commissioner shall disqualify an individual who is the subject of a background study from any position allowing direct contact with persons receiving services from the license holder or entity identified in section 245C.03, upon receipt of information showing, or when a background study completed under this chapter shows any of the following:

- (1) a conviction of, admission to, or Alford plea to one or more crimes listed in section 245C.15, regardless of whether the conviction or admission is a felony, gross misdemeanor, or misdemeanor level crime;
- (2) a preponderance of the evidence indicates the individual has committed an act or acts that meet the definition of any of the crimes listed in section 245C.15, regardless of whether the preponderance of the evidence is for a felony, gross misdemeanor, or misdemeanor level crime; or
- (3) an investigation results in an administrative determination listed under section 245C.15, subdivision 4, paragraph (b).

Subd. 2. **Disqualification from access.** (a) If an individual who is studied under section 245C.03, subdivision 1, clauses (2), (5), and (6), is disqualified from direct contact under subdivision 1, the commissioner shall also disqualify the individual from access to a person receiving services from the license holder.

(b) No individual who is disqualified following a background study under section 245C.03, subdivision 1, clauses (2), (5), and (6), or as provided elsewhere in statute who is disqualified as a result of this section, may be allowed access to persons served by the program unless the commissioner has provided written notice under section 245C.17 stating that:

- (1) the individual may remain in direct contact during the period in which the individual may request reconsideration as provided in section 245C.21, subdivision 2;
- (2) the commissioner has set aside the individual's disqualification for that licensed program or entity identified in section 245C.03 as provided in section 245C.22, subdivision 4; or
- (3) the license holder has been granted a variance for the disqualified individual under section 245C.30.

#### **Minnesota Rules, part 2960.3000 FOSTER FAMILY SETTINGS.**

Subp. 1. **Purpose and applicability.** Parts 2960.3000 to 2960.3100 establish the minimum standards that a foster family setting must meet to qualify for licensure. Parts 2960.3200 to 2960.3230 contain requirements for foster residence settings. Additional licensing requirements for foster family settings that offer treatment foster care are in parts 2960.3300 to 2960.3340.

#### **Minnesota Rules, part 2960.3020 LICENSING PROCESS.**

Subp. 11. **Denial of license.** The commissioner of human services or corrections shall deny a license if the applicant fails to fully comply with laws or rules governing the program or fails to cooperate with a placing or licensing agency. Failure to fully comply shall be indicated by:

- C. documentation of a disqualification of the applicant for licensure or relicensure, or the controlling individual regarding a background study which has not been set aside. . .

Violation: On December 1, 2009, Mr. and Ms. Applicant applied to Family County Human Services for a child foster care license. A background study was completed for all required individuals. It was found that Mr. Applicant was charged and convicted in May 2005 with 609.582 2<sup>nd</sup> degree Burglary and charged in September 2007 with 609.527 Identity Theft. On December 28, 2009, a Notice of Disqualification was sent to Mr. Applicant. A request for reconsideration was not received.

All copies of pertinent information are enclosed.

Because an applicant has a disqualification which has not been set aside and no variance has been granted, this Agency is recommending denial of their application to provide child foster care.

Please feel free to contact me with any questions. I can be reached at 651-555-5555.

Thank you,

Sally Statute  
Child Foster Care Licensor  
Family County