STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES

In the Matter Of:

Cyntrell's House of Learning Family Day Home
Cynthia Young, Owner/Director
2245 Frayser Blvd.
Memphis, Tennessee 38127

ORDER ASSESSING CIVIL PENALTIES

Pursuant to Tennessee Code Annotated §71-3-509(c) and Rule 1240-4-5-.04(3) of the Tennessee Department of Human Services, and other Rules as cited herein, this Order assesses civil penalties for violations of licensing regulations in the total amount of **Five Hundred Dollars ($500.00)** against Cyntrell's House of Learning Family Day Home, a licensed "child care agency," as defined by Tenn. Code Ann. § 71-3-501(4) and a "family child care home" as defined by Tenn. Code Ann. § 71-3-504(9). Six (6) civil penalties for minor violations in the amount of fifty dollars ($50.00) each are assessed. One (1) civil penalty for a major violation in the amount of two hundred dollars ($200.00) is assessed.

A. DEPARTMENT'S AUTHORITY TO ASSESS CIVIL PENALTIES AND FACTORS TO BE CONSIDERED IN ASSESSING CIVIL PENALTIES:

Authority:

The following law sets out the authority of the Tennessee Department of Human Services (the "Department" or "DHS") to assess civil penalties:

Tenn. Code Ann. § 71-3-509(c)(1):

If the department determines that there exists any violation with respect to any person or entity required to be licensed pursuant to this part, the department may assess a civil

penalty against such person or entity for each separate violation of a statute, rule or order pertaining to such person or entity in an amount ranging from fifty dollars ($50.00) for minor violations up to a maximum of one thousand dollars ($1,000) for major violations or violations resulting in death or injury to a child as defined in the rules of the department. Each day of continued violations constitutes a separate violation.

See also Rule 1240-4-5-.04(3) of the Rules of the Tennessee Department of Human Services.

Tennessee Code Annotated § 71-3-502(a)(2) also gives the "department the authority to issue regulations pursuant to the provisions of the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, part 2, for the licensing of any persons or entities subject to any provision of this part [Part 5--Child Care Agencies] and for enforcement of appropriate standards for the health, safety and welfare of children in their care."

Factors:

The following law sets out factors to be considered when taking licensing action against a child care agency.

Tenn. Code Ann. § 71-3-502(a)(3)

The department's regulations of child care agencies shall be developed based upon consideration of the criteria in subdivisions (a)(3)(A)-(F). In determining whether to initially grant a license or whether to take any licensing action involving a licensed child care agency, the statutory criteria in subdivisions (a)(3)(A)-(F) may be cited and considered by the department and by the child care agency board of review as the basis for such action in addition to the regulations:

(A) The safety, welfare and best interests of the children in the care of the agency;

(B) The capability, training and character of the persons providing or supervising the care of the children;

(C) Evidence that the expected performance of the caregivers, supervisors or management of the child care agency seeking initial licensure or renewal of licensure will be such as to protect children in care from injury, harm or the threat of injury or harm; or, during licensure, that the actual performance of any of the duties of caregivers, supervisors or management of a licensed child care agency demonstrates or has demonstrated a level of judgment, that a reasonable person would exercise or would have exercised, under existing or

under reasonably foreseeable circumstances, that would prevent or would have prevented injury, harm, or the threat of injury or harm, to any child in care;

(D) The quality of the methods of care and instruction provided for the children;

(E) The suitability of the facilities provided for the care of the children; and

(F) The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency.

The following rules provide for the imposition of civil penalties when child care facilities are found to be in violation of child care rules:

1240-4-5-.04(3) Civil Penalties.

(a) General Provisions

1. If the Department determines that there exists any violation with respect to any person or entity required to be licensed pursuant to Tenn. Code Ann. §§ 71-3-501 et seq., the Department may assess a civil penalty against such person or entity for each separate violation of a statute, rule or order pertaining to such person or entity in an amount ranging from Fifty Dollars ($50.00) for minor violations up to a maximum of One Thousand Dollars ($1,000.00) for major violations or violations resulting in death or injury to a child as defined in the rules of the Department. Each day of continued violation constitutes a separate violation.

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(b) Civil Penalties Schedule

1. Major Violations.

(i) For any violations of any licensing laws or regulations that, due to negligence or intentional disregard of licensing law or regulations, results in serious injury to, or death of, a child, the Department may assess a civil penalty in a range of Seven Hundred Fifty Dollars ($750.00) up to One Thousand Dollars ($1,000.00). The Department shall determine the amount of the penalty based upon the extent of the injury to the child and whether the injury or death of the child was the result of negligence or intentional disregard of the licensing regulations. Consideration of the licensee's history of prior violations

shall also be a factor in the determination of a factor in the determination of the amount of the civil penalty.

(ii) For any violation of any licensing laws or regulations that, due to negligence or intentional disregard of licensing law or regulations, results in an injury to a child, the Department may assess a civil penalty in a range from Three Hundred Dollars ($300.00) up to Five Hundred Dollars ($500.00). The Department shall determine the amount of the penalty based upon the extent of the injury and whether the injury to the child was the result of negligence or intentional disregard of the licensing regulations. Consideration of the licensee's history of prior violations shall also be a factor in the determination of the amount of the civil penalty.

(iii) For violations of the following categories of regulations the Department may impose a civil penalty of Two Hundred Dollars ($200.00) for the first violation, Three Hundred Dollars ($300.00) for the second violation, and Four Hundred Dollars ($400.00) for the third and any subsequent such violation:

(I) Failure to follow any rule related to the proper transportation of children by employees, substitutes, volunteers, agents or contractors of the agency;

(II) Adult:Child Ratios;

(III) Lack of proper supervision of children;

(IV) Failure to properly dispense or store medications;

(V) Failure to remove persons from access to children following notification of a prohibited criminal background or pending criminal charge or following notification of the person's validated status as a perpetrator of child abuse;

(VI) Failure to properly store hazardous items such as, but not limited to, cleaning products, pesticides, hazardous chemicals, or other poisonous items; and

(VII) Failure to properly remove or secure firearms within the child care agency area which are under the ownership or control of

the agency, or its staff substitutes or other persons permitted access to the children, or failure to prevent exposure of children in the agency's care to firearms which are under the control of the agency, or its staff, substitutes or other persons who have been permitted by the agency to have access to the children;

(iv) The existence of six (6) or more minor violations of any type in any period of three (3) or more months shall constitute a major violation and may be subject to a civil penalty imposed by the Department of Two Hundred Dollars ($200.00) in addition to the penalty for each minor violation. Three (3) or more minor violations of the same regulation in any period of three (3) or more months shall constitute a major violation and may be subject to a civil penalty imposed by the Department of Two Hundred Dollars ($200.00) in addition to the penalty for each minor violation.

2. Minor Violations.

(i) A minor violation shall be any rule violation not described as a major violation in part 1.

(ii) Each minor violation may subject the licensee to a civil penalty of Fifty Dollars ($50.00).

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B CIRCUMSTANCES REGARDING VIOLATIONS:

This agency has been licensed since March 3, 2010. On September 29, 2010, a complaint was made to the Department, alleging the following facts:

There is only one (1) worker with twelve (12) or thirteen (13) children; she also has to prepare their lunch during the day. The Director Ms. Cynthia, is never there; she is at school from 9:00-12:00 and then she has to pick up the children from school at 1:45 p.m. and she does not return until 3:15 p.m. Ms. Cynthia Young also spanks the children. The Director's mother, Ms. Alice Brown is using her sister's (Ms. Tanalina Brown's) background information because Ms. Alice Brown has a bad background.

Subsequent to the complaint from the caller, Program Evaluator Ms. Polk made an unannounced visit to Cyntrell's House of Learning Family Day Home on September 30, 2010, to investigate the allegations in the complaint. Ms. Polk obtained a written statement from the Owner/Director , Cynthia Young. In her statement, Ms. Young confirmed that she had hired her mother, Ms. Alice Brown, "under another name," that of her sister Ms. Tangia Mason-Brown; Ms. Young confirmed that she falsified Ms. Alice Brown's disclosure form, using Ms. Tangia Mason-Brown's name and background information so that Ms. Alice Brown would pass the criminal background and registry review checks and qualify for employment.

Violations Observed:

•Owner/Director, Ms. Cynthia Young, falsified Alice Brown's disclosure form.

•Ms. Young allowed caregiver, Alice Brown, to work without requiring her to undergo criminal background and registry review checks.

•Ms. Young allowed caregiver, Alice Brown, to work without requiring her to submit recommendations from three nonrelated references.

•Ms. Young failed to keep Ms. Alice Brown's health records on file for review by the Department.

•Ms. Young failed to obtain and keep on file a copy of Ms. Alice Brown's disclosure form and the results of her criminal history and registry review checks for review by the Department.

•Ms. Young allowed caregiver, Alice Brown, to work without requiring Ms. Brown to submit written evidence of having had a physical examination and a statement of good physical and mental health.

•Ms. Young allowed caregiver, Alice Brown, to work without having on file evidence of a tuberculin skin test or chest X-ray with negative results.

These violations committed by the agency since its licensure are the subject of the civil penalties herein.

1. **FIRST VIOLATION: FALISIFIED DISCLOSURE FORM**

During the visit to the agency on September 30, 2010, Program Evaluator Ms. Polk confirmed that Ms. Cynthia Brown unlawfully falsified the disclosure form for caregiver, Alice Brown, by providing Tangia Mason Brown's social security number and background information, so that Alice Brown would qualify for employment at the agency.

This action is in violation of Tenn. Code Ann. § 71-3-507, which requires caregivers to submit a disclosure form and have criminal background and registry review checks.

Tenn. Code Ann. § 71-3-507(l) states: **"It is unlawful for any person to falsify any information required on the disclosure form required by this section...."**

Compliance with the foregoing statute requires that all records must be accurate with no false information.

Pursuant to the Rules cited above in Section A., a violation of this statute carries a penalty in the amount of fifty dollars ($50.00). Cyntrell's House of Learning Family Day Home is hereby assessed a penalty in this amount.

This is the first civil penalty assessed against the agency.

2. **SECOND VIOLATION: FAILURE TO REQUIRE CAREGIVER TO UNDERGO BACKGROUND CHECKS**

During the visit to the agency on September 30, 2010, Program Evaluator Ms. Polk confirmed that Alice Brown was working as a caregiver at the agency despite the fact that she had not had criminal background and registry review checks completed.

This action is in violation of Tenn. Code Ann. § 71-3-507, which requires caregivers to undergo criminal background and registry review checks before working at an agency. Specifically, Tenn. Code Ann. § 71-3-507(d), states:

The childcare agency or the department shall not permit a person to assume any role described in subdivision (a)(1) prior to the completion of a review of the criminal history and juvenile records available to the TBI and the juvenile court, including the fingerprint-based background review, review of the department of health's vulnerable persons registry and the state's sex offender registry, and, pursuant to § 71-3-515, a review of the department of children's services and the department of human services records of indicated perpetrators of abuse or gross neglect of children or adults, and, if determined necessary by the department, juvenile court records reviews. The reviews must demonstrate that the person is not subject to a criminal history or a juvenile history or a

history on the registries or in the records of the department of children's services or the department of human services that would, as described in this part, disqualify or otherwise exclude the person from any role described in subdivision (a)(1).

In addition, this failure to have Ms. Alice Brown undergo background checks is in violation of Rule 1240-04-04-.03(1)(a)6.(i) of the Rules of the Tennessee Department of Human Services, which states:

1240-04-04-.03 STAFF.

(1) Qualifications.

(a) All Caregivers.

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6. Criminal history and abuse registry background checks; appeals; exemptions.

(i) Each person:

(I) Applying to work with children as a paid employee, a director, or manager of a child care agency;

(II) Applying to work as a new substitute in a child care agency;

(III) Who applies for a license for, or who otherwise seeks to operate (an "operator") a child care agency as defined in TCA §§ 71-3-501 et seq. and who has significant contact with children in the course of the role of operator. For purposes of this subparagraph, an "operator" shall be an individual who is an owner or administrator of a child care agency or a child care system; or

(IV) Fifteen (15) years of age or older who resides in a child care agency or who moves into a child care agency following initial licensure shall:

I. Complete a criminal history disclosure form as approved by the Department;

II. **Supply a fingerprint sample in a manner prescribed by the Tennessee Bureau of Investigation in accordance with procedures established by the Department, and shall submit to a fingerprint based criminal history check to be conducted by the Department and the Tennessee Bureau of Investigation in accordance with procedures established by the Department;**

III. **Submit to a review of their status on the Department of Health's vulnerable persons registry under Title 68, Chapter 11, Part 10 of the Tennessee Code Annotated.**

IV. **Agree to release all records relating to his or her criminal history to the child care agency and to the Department so that the criminal history information can be verified.**

Compliance with the foregoing statute and regulation requires that an agency make sure all caregivers undergo criminal background and registry review checks before working at an agency.

Pursuant to the Rules cited above in Section A., a violation of the statute and rules related to requiring a caregiver to undergo background checks carries a penalty in the amount of fifty dollars ($50.00). The agency is hereby assessed a penalty in this amount.

This is the second civil penalty assessed against the agency.

3. **THIRD VIOLATION: FAILURE TO REQUIRE CAREGIVER TO SUBMIT RECOMMENDATIONS FROM THREE NONRELATED REFERENCES**

During the visit to the agency on September 30, 2010, Program Evaluator Ms. Polk confirmed that Ms. Alice Brown was working as a caregiver at the agency despite not having submitted recommendations from three nonrelated references.

This failure to have Ms. Alice Brown submit recommendations from three nonrelated references is in violation of rule 1240-04-04-.02(4)(b)1. of the Rules of the Tennessee Department of Human Services, which states:

1240-04-04-.02 OWNERSHIP AND ADMINISTRATION.

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(4) Records.

The following records shall be kept and shall be available to the Department:

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(b) Staff records including:

1. Recommendations from three nonrelated references on each applicant and caregiver....

Compliance with the foregoing regulation necessitates that an agency require a caregiver to submit recommendations from three nonrelated references and that the agency keep those recommendations on file for review by the Department.

Pursuant to the Rules cited above in Section A., a violation of this Rule related to recommendations carries a penalty in the amount of fifty dollars ($50.00). The agency is hereby assessed a penalty in this amount.

This is the third civil penalty assessed against the agency.

4. FOURTH VIOLATION: FAILURE TO KEEP CAREGIVER'S HEALTH RECORDS ON FILE FOR REVIEW BY DEPARTMENT

During the visit to the agency on September 30, 2010, Program Evaluator Polk confirmed that Ms. Alice Brown was working as a caregiver at the agency despite not having submitted health records as required by applicable rules.

This failure to have Ms. Alice Brown submit her health records, and to keep those records on file for review by the Department, is in violation of Rule 1240-04-04-.02(4)(b)4. of the Rules of the Tennessee Department of Human Services, which states:

1240-04-04-.02 OWNERSHIP AND ADMINISTRATION.

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(4) Records.

The following records shall be kept and shall be available to the Department:

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(b) Staff records including:

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4. Adult health records.

Compliance with the foregoing regulation requires that an agency require a caregiver to submit health records and that the agency keep those health records on file for review by the Department.

Pursuant to the Rules cited above in Section A., a violation of this Rule related health records carries a penalty in the amount of fifty dollars ($50.00). The agency is hereby assessed a penalty in this amount.

This is the fourth civil penalty assessed against the agency.

5. FIFTH VIOLATION: FAILURE TO MAINTAIN A COPY OF THE DISCLOSURE FORM AND THE RESULTS OF THE BACKGROUND CHECKS

During the visit to the agency on September 30, 2010, Program Evaluator Ms. Polk confirmed that Ms. Young failed to obtain and maintain a copy of a disclosure form from Ms. Alice Brown; nor did Ms. Young obtain and maintain a copy of any background checks for Ms. Alice Brown.

This failure to obtain a copy of Ms. Alice Brown's disclosure form and the results of background checks and to keep those records on file for review by the Department, is in violation of Tenn. Code Ann. § 71-3-507(a)(5), which states: **"A copy of the disclosure form shall be maintained in the childcare agency's records for review by the department...."**

In addition, this failure to obtain a copy of Ms. Alice Brown's disclosure form and the results of background checks and to keep those records on file for review by the Department is in violation of Rule 12-04-04-.03(1)(a)6.(v) of the Rules of the Tennessee Department of Human Services, which states:

1240-04-04-.03 STAFF.

(1) Qualifications.

(a) All Caregivers.

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6. Criminal history and abuse registry background check; appeals; exemptions.

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(v) A copy of the disclosure form and the results of the criminal history check and the results of the inquiry to the Department of Health's vulnerable persons registry shall be maintained in the child care agency's records for review by the Department of Human Services.

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Compliance with the foregoing statute and regulation requires that an agency obtain a caregiver's disclosure form and results of background checks and keep those records on file for review by the Department.

Pursuant to the Rules cited above in Section A., a violation of the statute and rule related to obtaining and maintaining disclosure forms and results of background checks carries a penalty in the amount of fifty dollars ($50.00). The agency is hereby assessed a penalty in this amount.

This is the fifth civil penalty assessed against the agency.

6. SIXTH VIOLATION: FAILURE TO REQUIRE CAREGIVER TO SUBMIT WRITTEN EVIDENCE OF PHYSICAL AND STATEMENT OF GOOD HEALTH

During the visit to the agency on September 30, 2010, Program Evaluator Ms. Polk confirmed that Ms. Young failed to require Ms. Alice Brown to submit written evidence of a physical examination and a statement, signed or stamped by a physician, that the Ms. Brown's general physical and mental condition permitted her to direct and actively participate in the activities of a group of young children.

This failure to require Ms. Brown to submit written evidence of a physical and a statement of good health is in violation of Rule 1240-04-04-.06(3)(a) of the Rules of the Tennessee Department of Human Services, which states:

1240-04-04-.06 HEALTH AND SAFETY.

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(3) Caregiver's Health Requirements.

(a) Before beginning to work, each caregiver shall have written evidence of a physical examination and statement that the caregiver's general physical and mental condition will permit the individual to direct and actively participate in the activities of a group of young children. The form or statement shall be signed or stamped by a physician.

Compliance with the foregoing regulation requires that an agency require a caregiver to submit written evidence of having had a physical examination and a statement of good physical and mental health, signed or stamped by a physician.

Pursuant to the Rules cited above in Section A., a violation of the regulation related to requiring a caregiver to submit written evidence of having had a physical and a statement of good physical and mental health carries a penalty in the amount of fifty dollars ($50.00). The agency is hereby assessed a penalty in this amount.

This is the sixth civil penalty assessed against the agency.

7. SEVENTH VIOLATION:SIX OR MORE MINOR VIOLATIONS CONSTITUTING A MAJOR VIOLATION

Pursuant to Rule 1240-04-05-.04(3)(b)1.(iv) of the Rules of the Tennessee Department of Human Services the existence of six or more minor violations in any three month period shall constitute a major violation:

1240-04-05-.04 VIOLATIONS OF LICENSING REGULATIONS.

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(3) Civil Penalties.

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(b) Civil Penalties Schedule.

1. Major Violations.

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(iv) The existence of six (6) or more minor violations of any type in any period of three (3) or more months shall constitute a major violation and may be subject to a civil penalty imposed by the Department of Two Hundred Dollars ($200.00) in addition to the penalty for each minor violation.

Because Cyntrell's House of Learning Family Day Home has been assessed six minor violations as a result of the Program Evaluator's visit on September 30, 2010, this seventh violation is assessed in the amount of two hundred dollars ($200.00).

This is the seventh civil penalty assessed against the agency.

C. FACTORS CONSIDERED IN DETERMINING PENALTY:

Pursuant to Tenn. Code Ann. § 71-3-502(a)(3), set forth above in Section A., the following factors were considered in determining the penalty to be assessed as allowed by Tenn. Code Ann. § 71-3-509(c)(1):

1. The safety, welfare, and best interests of the children in the care of the agency are not being met if the agency falsifies a caregiver's disclosure form and if the employees of the agency are not required to undergo background checks and if the agency does not keep the required documentation regarding the background checks on file.
2. The capability, training, and character of the persons providing or supervising the care to the children cannot be assessed if those persons do not undergo background checks or have a complete file of required documentation.
3. Falsified background checks and a failure to have employees undergo background checks and failure to keep a record of those background checks on file demonstrates a lack of judgment by the agency.
4. Falsified background checks and a failure to have employees undergo background checks and a failure to keep a record of those background checks on file demonstrate the agencies inadequate methods of administration and management of the child care agency.

Due to the deceitful nature of these violations and the seriousness of these violations the Department believes that the penalties set forth in this Order are justified and necessary. Staff must undergo the required background checks and staff files must contain the proper legal clearance documentation prior to the employee beginning work for the agency. Management has the ultimate responsibility of assuring that individuals interacting with the children are properly screened to insure the safety of children under their supervision. Failure to comply with these statutes and regulations puts children at risk and compromises their safety and needs being met. Because of the serious nature of these violations, the Department has decided to assess the penalties stated herein.

D. FINAL DATE OF PENALTIES:

Unless appealed in writing to the Commissioner of the Department of Human Services, this Order Assessing Civil Penalties shall become final ten (10) days after the date the Order is served. **The final date of the penalties will be ten (10) days after the date of service of the Order as stated in the Certificate of Service on the last page of this Order.**

E. METHOD OF PENALTY:

Payments should be made by cashier's check (no personal checks) or money order to the State of Tennessee. Payments should be mailed within thirty (30) days of receipt of this Order to The Department of Human Services, ATTN: Jim Williams, Fiscal Services, Citizens Plaza Bldg., 5th Floor, Nashville, Tennessee, 37243.

Unless timely appealed as set out in Section F. below, payment in full must be received by the Department within 30 days of the final date of the penalties as set out in Section D above.

F. APPEAL RIGHTS:

Pursuant to Tenn. Code Ann. §4-5-307, the Licensee/Agency is given the following notice:

1. The agency has a right to appeal this Order Assessing Civil Penalties **within ten (10) days from the date of service of this Order as shown in the Certificate of Service** on the last page of this Order.

2. The appeal must be made by making a request **in writing** to: Child Care Licensing Director, Licensing Unit, Citizens Plaza, 14th Floor, 400 Deaderick Street, Nashville, Tennessee, 37243-9800 for a hearing before the Child Care Agency Board of Review.

3. The appeal is held under the provisions of:

   a. The Uniform Administrative Procedures Act (Tenn. Code Ann. §§4-5-301 et seq.);

   b. Tenn. Code Ann. §§71-3-501 et seq.;

   c. Rules of the Tennessee Department of Human Services, Chapter 1240-4-5.

4. Description of Appeal Process and Agency's Status:

   a. The hearing before the Child Care Agency Board of Review provides a process for persons and entities licensed by the Department of Human Services to appeal an action of the Department of Human Services affecting a licensed child care agency. The Child Care Agency Board of Review determines whether the action regarding the civil penalties against the child care agency that is proposed by Department of Human Services is supported by the facts and the law, and, based upon the evidence presented at the hearing, the Board will determine whether the assessment of the penalties against the child care agency should be upheld.

   b. Failure to appeal by the end of the appeal period noted in paragraph C. below will result in the assessed civil penalties becoming final on the date stated in Section D., above. If not paid when the assessment becomes final, the Department may apply to the Chancery Court of Davidson County, Tennessee for enforcement of the assessment. Further, failure to pay a final civil penalty may affect pending applications for licenses or future applications for new or renewal licenses.

   c. If not appealed within ten (10) days of the date of service of the Order as stated in the Certificate of Service on the last page of this Order, the civil penalties takes effect ten (10) days of the date of service of the Order as stated in the Certificate of Service on the last page of this Order.

   d. If appealed within ten (10) days of the date of service, the Board of Review will schedule this case to be heard. If timely appealed, this Order Assessing Civil Penalties is final within seven (7) days of the entry date of the order of the Child Care Agency Board of Review which upholds the assessment, unless the Board's order is stayed. The child care agency will be notified of the date of the hearing by additional notice of the hearing date from the Recording Secretary of the Board.

5. The agency has a right to be represented at the hearing by retained legal counsel.

Issued this 18th day of May, 2011.

Raquel Hatter

Raquel Hatter
Commissioner
Department of Human Services

by: _____
Authorized Representative
State of Tennessee
Department of Human Services