

**State of Oregon  
Department of Human Services  
Child Welfare Program  
500 Summer St. NE E62  
Salem, OR 97301-1067**

In the Matter of:

Chehalem Youth and Family Services

Notice of Intent to Revoke  
License of Child Caring Agency  
and Opportunity for a Hearing

To: Deborah Cathers-Seymour  
Executive Director  
Chehalem Youth and Family Services  
504 Villa Road, Suite 3  
Newberg, OR 97132

**I. Notice of Intent to Revoke License**

This is a notice of intent to revoke the License of Approval to Operate a Child Caring Agency (“License”) held by Chehalem Youth and Family Services. (“CYFS”).

This Notice of Intent to Revoke the License of Child Caring Agency and Opportunity for a Hearing (“Notice”) is issued to you pursuant to Oregon Revised Statute (ORS) Chapter 183; ORS 409.050; ORS 418.005; ORS 418.205 through ORS 418.32; and Oregon Administrative Rules (OAR) OAR 413-215-0001 through OAR 413-215-0131 (Licensing Umbrella Rules), OAR 413-215-0501 through OAR 413-215-0586 (Licensing Residential Care Agencies), and OAR 407-007-0010 (Definitions).

**II. Background**

ORS 418.005(1)(a) gives DHS the authority to adopt “all necessary rules and regulations for administering child welfare services” in order “to establish, extend, and strengthen welfare services for the protection and care of homeless, dependent or neglected children or children in danger of becoming delinquent[.]”

The Department of Human Services (DHS) has adopted administrative rules that prescribe standards for licensing private child-caring agencies, including residential care agencies, and procedures for DHS to follow when it revokes a license. OAR 413-215-0081 to OAR 413-215-0121. DHS conducts periodic inspections to determine whether a program is maintained and operated in compliance with the rules in OAR 413-215 and other applicable rules. DHS also screens all reports of abuse, dereliction, or deficiency in or by an agency. OAR 413-215-0106.

Under this authority, DHS has licensed CYFS as Child Caring Agency for several years and most recently renewed CYFS' license on August 1, 2014. Since that renewal, there have been multiple announced and unannounced site visits by the Office of Licensing and Regulatory Oversight ("Licensing"), including the most recent on April 26, 2016. CYFS provides residential treatment to approximately 24 children at its Newberg, Oregon facility. Currently all residents are wards of the juvenile court.

DHS staff have reviewed CYFS programs on numerous occasions throughout CYFS' period of licensure. DHS staff have reviewed CYFS both periodically for licensing review and intermittently as necessary to investigate specific concerns or complaints.

The circumstances precipitating this Notice came to DHS's attention from an increasing number of reports generated from CYFS since October 2015. The need for review arose after DHS received a series of concerning reports about unsupervised youth and unauthorized behavior management at the facility.

The Office of Adult Abuse Prevention and Investigations (OAAPI) has conducted multiple investigations of incidents occurring at CYFS since September 2015. Those investigations involve youth who were missing from the facility overnight unnoticed, failure to notify emergency technicians when a youth was unconscious for nearly one hour, and mandatory reporting failures involving sexual assault allegations. Seven of eight OAAPI reports completed since September 2015 have resulted in substantiated findings of neglect, maltreatment or failure to perform duties required to protect a youth's health or safety. Numerous OAAPI reports are under investigation and pending at this time.

DHS conducted an unannounced site visit on January 6, 2016 after receiving multiple reports of abuse and neglect and subsequent OAAPI investigations. Concerns at the time of the site visit were focused on frequent runaways, concerns from the community, peer assaults, staff turnover, behavior management training, and sexual relationships between peers. DHS issued a list of corrective actions including compliance with and re-training regarding mandatory child abuse reporting laws in a format approved by DHS and formal training in behavior intervention protocols. CYFS was compliant with the corrective actions within the 45-day time period.

Nevertheless, CYFS has struggled to follow behavior intervention protocols and adequately supervise its clients. It has also failed to follow emergency medical protocols. CYFS is also experiencing financial difficulties and is on the path to insolvency, but has issued a response to DHS' corrective action regarding its finances that is currently under review.

To evaluate CYFS' ability to comply with Licensing Umbrella Rules, Licensing Residential Care Agency rules, and the above conditions, DHS has been monitoring CYFS closely on a regular basis since the October incident described above. To protect child welfare, admissions to CYFS have been closed since May 19, 2016.

DHS's findings underlying the current proposed revocation are summarized below. Excerpts of law are printed in italic.

### **III. DHS Findings**

#### **1. Failure to comply with mandatory reporting requirements and notify DHS of critical events within the prescribed timeline**

##### ***ORS 419B.010***

*(1) Any public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child shall immediately report or cause a report to be made in the manner required in ORS 419B.015 (Report form and content).\*\*\*\**

*\*\*\*\**

*(3) The duty to report under this section is personal to the public or private official alone, regardless of whether the official is employed by, a volunteer of or a representative or agent for any type of entity or organization that employs persons or uses persons as volunteers who are public or private officials in its operations.*

*(4) The duty to report under this section exists regardless of whether the entity or organization that employs the public or private official or uses the official as a volunteer has its own procedures or policies for reporting abuse internally within the entity or organization.*

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##### ***ORS 419B.015***

*(1)(a) A person making a report of child abuse, whether the report is made voluntarily or is required by ORS 419B.010 (Duty of officials to report child abuse), shall make an oral report by telephone or otherwise to the local office of the Department of Human Services, to the designee of the department or to a law enforcement agency within the county where the person making the report is located at the time of the contact. The report shall contain, if known, the names and addresses of the child and the parents of the child or other persons responsible for care of the child, the child's age, the nature and extent of the abuse, including any evidence of previous abuse, the explanation given for the abuse and any other information that the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator.*

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##### ***413-215-0006 Definitions***

*As used in OAR 413-215-0001 to 413-215-0131:*

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*(5) "Licensee" means a private child-caring agency or an organization or school that offers a residential program for children (regulated by ORS 418.327) and holds a license issued by the Department.*

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##### ***413-215-0091 Responsibilities of Licensees***

*A licensee (defined in OAR 413-215-0006) is responsible to do all of the following:*

*\*\*\*\**

*(4) Notify a licensing coordinator in the Residential Treatment Services and Licensing Unit of the Department within one business day if a critical event occurs. As used in this section, a*

*"critical event" is a significant event occurring in the operation of an agency that is considered likely to cause complaints, generate concerns, or come to the attention of the media, law enforcement agencies, first responders, Child Protective Services, or other regulatory agencies. Compliance with this notification requirement does not satisfy the mandatory reporting requirements under ORS 419B.005 to 419B.045.*

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***OAR 413-215-0011 Requirement to Obtain and Comply with License***

*(1) Except for a licensee (defined in OAR 413-215-0006) subcontractor that provides limited services under OAR 413-215-0061(5)(b):*

*(a) An agency (defined in OAR 413-215-0006) must have a license issued by the Department in accordance with Division 413-215. An agency holding a license issued by the Department under these rules (a licensee) must at all times comply with the provisions of the license and with all laws (including rules) applicable to the agency.*

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***OAR 413-215-0021 Governance***

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*(4) The executive or program director must be responsible for all of the following:*

*(a) The daily operation and maintenance of the agency and its facilities in compliance with the rules in division 413-215 and the established program budget.*

*(b) Administration of policies and procedures to ensure clear definition of staff roles and responsibilities, lines of authority, and equitable workloads that ensure safe and protective care, supervision, and treatment of the children served by the agency.*

*(c) Ensuring that only individuals whose presence does not jeopardize the health, safety, or welfare of the children served by the agency are employed or used as volunteers.*

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CYFS has failed to comply with mandatory reporting requirements and DHS licensing rules. A youth reported to a counselor on December 31, 2015 the youth was raped at least eleven times since March 2015. The youth had previously reported incidents of rape in August 2015. The CYFS Operations Manager, a mandatory reporter, conducted an independent investigation in August 2015 and concluded the youth had engaged in consensual sexual contact, obviating the need to make report to either DHS or the child abuse hotline. The youth's counselor reported the December 2015 disclosure to the Operations Manager, who incorrectly determined the allegations had already been reported. The counselor, also a mandatory reporter, did not make a child abuse report.

CYFS did not report the disclosure to DHS until January 13, 2016 and did not make a call to the child abuse hotline until January 14, 2016 at the prompting of the child welfare caseworker. Pursuant to OAR 413-215-0091, the licensee is required to notify the licensing coordinator of critical events within one business day. CYFS waited nearly two weeks to report the critical incident to DHS in violation of the rule. Additionally, CYFS failed to comply with the mandatory reporting statute, which is explicitly required in the provisions of 413-215-0091. The Operations Manager's independent investigation was inadequate because there was reason to believe the youth had suffered abuse given the youth's multiple disclosures in violation of OAR

413-215-0021's directive to administer policies that ensure safe and protective care of children. Nevertheless the Operations Manager failed to notify authorities immediately in violation of ORS 419B.040 and ORS 419.015 and OAR 413-2015-0091. Furthermore, the Operations Manager and the counselor failed to comply with the mandate in OAR 413-215-0021 to follow all laws.

A high volume of critical incident reports have been received in the past six months, some of which have not been reported to DHS within the prescribed timeline in violation of OAR 413-215-0091.

## **2. Inability to provide adequate supervision and protection to children**

### ***413-215-0051 Resources Required***

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*(2) An agency must employ or contract for a sufficient number of employees to perform the functions regulated by these rules and to provide adequate care, safety, protection, and supervision of the children and families the agency serves.*

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### ***413-215-0561 Minimum Staffing Requirements***

*A residential care agency (defined in OAR 413-215-0506) must meet all of the following requirements:*

*(1) Minimum staffing patterns. The residential care agency must establish staff-to-child ratios that will provide adequate supervision and protection for children. The ratios must be adequate for the type of program, location of program, the age and type of children served, physical plant design, location and ability of the supervisor to respond, electronic backup systems, and other means available to ensure a high standard of supervision and protection. The minimum staffing ratios are as follows:*

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*(c) For residents who are six years of age or older, one direct care staff for each seven residents.*

*(2) Overnight staffing requirements.*

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*(b) During normal sleeping hours, the minimum staffing requirement is one awake direct care staff on duty in the facility (defined in OAR 413-215-0506) for each 10 children.*

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### ***OAR 413-215-0021 Governance***

\*\*\*\*

*(4) The executive or program director must be responsible for all of the following:*

*(a) The daily operation and maintenance of the agency and its facilities in compliance with the rules in division 413-215 and the established program budget.*

*(b) Administration of policies and procedures to ensure clear definition of staff roles and responsibilities, lines of authority, and equitable workloads that ensure safe and protective care, supervision, and treatment of the children served by the agency.*

*(c) Ensuring that only individuals whose presence does not jeopardize the health, safety, or welfare of the children served by the agency are employed or used as volunteers.*

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CYFS has failed and continues to fail to provide adequate supervision to its clients despite meeting minimum staffing requirements set out in OAR 413-215-0561. The inability to adequately supervise clients with its current staffing ratio is a violation of OAR 413-215-0561, which requires a staff-to-child ratio that will provide adequate supervision and protection for children.

CYFS fails to employ a sufficient number of staff who trained and equipped with the skills necessary for effective supervision of youth in violation of 413-215-0051 and 413-215-0561. For example, in October 2015, three youths eloped from the facility through a youth's window for approximately seven hours without being noticed. During that time the youth consumed alcoholic beverages and engaged in sexual intercourse. A staff member documented completing expected room checks, but video surveillance confirmed those checks did not in fact occur. The youths reported having snuck out from the facility overnight unnoticed on numerous occasions. Staff assigned to the overnight shift reported receiving no training beyond a five-minute course conducted by a coworker. Staff was instructed at that time to check on the youth "every once in a while" by shining a cell phone light into their rooms. The staff member also reported being afraid of one of the clients and did not check on him very often due to personal safety concerns. OAAPI conducted an investigation and substantiated findings for failure to supervise.

On April 22, 2016, four CYFS residents were contacted in the community by law enforcement after officers received reports of vehicle prowling. The youths indicated they had left CYFS premises around 6 o'clock that evening. At the time officers made contact with the youths at 10:14 p.m., CYFS had not reported any residents missing from its program. The youths found prescription drugs in one of the vehicles and ingested nitroglycerin requiring assistance from fire medics. The youths were cited with multiple criminal charges, including Theft II, Criminal Trespass II, and Unlawful Entry into a Motor Vehicle. OAAPI is currently conducting a formal investigation of this incident.

OAAPI is investigating numerous incidents that occurred at CYFS recently. For example, two youths engaged in a physical altercation on May 31, 2016 while staff members were not in the vicinity to adequately supervise the youth. Incidents have also occurred involving youth eloping from the facility that CYFS does not report because staff were not aware the youth were missing.

OARs 413-215-0051, 413-215-0561, and OAR 413-215-0021 require CYFS to employ sufficient staff to provide adequate care, safety, protection, and supervision of the children. While CYFS may be meeting minimum staffing ratios, the facility is not employing staff who provide adequate supervision. The result of this inadequacy has led to youth engaging in dangerous and illegal behavior.

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### **3. Incomplete training and inadequate behavior management**

#### ***413-215-0556 Staff Training***

*In addition to the orientation requirements in OAR 413-215-0061(4), a residential care agency (defined in OAR 413-215-0506) must meet all of the following training requirements with respect to its staff (defined in OAR 413-215-0506):*

*(1) Staff of the residential care agency must be provided with orientation training prior to or within 30 days of hire. The orientation must include training on all of the following:*

*(a) Behavior management protocols including de-escalation skills training, crisis prevention skills, positive behavior management, and disciplinary techniques that are non-punitive in nature and are focused on helping children build positive personal relationships and self-control.*

*(b) If restraint and seclusion are utilized by the residential care agency, which techniques are approved by the residential care agency and how use of these procedures is monitored. The training must be clear that the policy of the residential care agency is that restraint or seclusion is used as an intervention of last resort.*

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#### ***413-215-0076 Behavior Management (Excluding Adoption Agencies and Academic Boarding Schools)***

*(1) An agency (defined in OAR 413-215-0006), except an agency licensed only to provide adoption services under OAR 413-215-0401 to 413-215-0481 or an agency licensed only as an academic boarding school under OAR 413-215-0201 to 413-215-0286, must meet all of the requirements of this rule.*

*(2) The agency must have and follow behavioral management policies consistent with the requirements of this rule. The policies must include a description of the model, program, or techniques used (for instance, a level system or token economy), and its use of each of the following:*

*(a) Non-violent crisis intervention. For purposes of this rule, non-violent crisis intervention means a nationally recognized, holistic system for defusing escalating behavior and safely managing physically aggressive behavior. The agency's choice of a non-violent crisis-intervention system must be conveyed to and approved by the Department.*

*(3) The behavior management policy of the agency must identify appropriate and positive methods of behavior management based on a child's needs, developmental level, and behavior.*

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CYFS staff are not adequately trained to engage in appropriate behavior management techniques. OAAPI substantiated findings of willful infliction of pain or injury and the use of profanity toward a youth. A staff member became upset when a youth kicked him during a restraint. The staff responded by kicking the youth in the leg and cursing at him. The youth complained of pain in his leg. During the OAAPI investigation, the staff admitted he was "set up for failure" because CYFS did not provide proper training on interventions with clients. Inadequate training is a violation of OAR 413-215-0556. Furthermore, the staff did not follow approved behavior

management policies and procedures by kicking the youth in violation of OAR 413-215-0076's directive to follow behavioral management policies.

OAAPI substantiated a finding of maltreatment and neglect on May 27, 2016 regarding an incident that occurred on January 22, 2016. A staff member lost their temper when working with a youth and made verbal assaults toward the youth and used an unauthorized restraint that escalated into a physical assault. The youth fell and received physical injuries to the chest. Staff actions in this incident are violations of OAR 413-215-0556 and 413-215-0076. Prior to this incident, Licensing conducted a program review to ensure staff received proper physical intervention training and mandatory reporter training pursuant to the corrective actions issued January 6, 2016. Licensing continues to monitor CYFS.

OAAPI is investigating a number of incidents involving youth receiving physical injuries during staff restraints.

#### **4. Failure to comply with emergency procedures and protocols**

##### ***413-215-0546 Health Services***

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*(5)A residential care agency must have established protocols for accessing routine and urgent care for the children in placement with the residential care agency.*

On September 27, 2015 two youths engaged in a physical altercation. When one youth was in a staff hold, the other youth threw multiple items at the restrained youth, including a heavy, metal watch. The watch struck the youth on the back of the head and the back of the youth's head then hit the wall at approximately 7:50 p.m. The youth lost consciousness, experienced interrupted breathing, and mucus was running from his nose. Staff positioned the youth on the youth's side to prevent choking. At 8:20 p.m., the youth began shaking, still unconscious. Staff moved the youth to a bed. At approximately 9:00 p.m., staff contacted emergency services. The youth was transported via ambulance and arrived at the hospital at approximately 9:25 p.m.

According to CYFS' "Emergency Procedures – Medical," "an emergency is a serious illness, including severe pain that *you believe* might result in death or serious injury if not treated." According to the procedure, staff must call 911 or take the individual to the nearest emergency room in the event of an emergency.

CYFS staff did not comply with the facility's procedure regarding medical emergencies. A youth was unconscious for over one hour before staff contacted emergency responders, despite the protocol to call 911 immediately or transport the individual to an emergency room. ORS 413-215-0546 requires a residential care agency to have established protocols for emergencies requiring urgent care. Although CYFS established a protocol, it did not comply with its emergency protocol in violation of 413-215-0546.

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## 5. Financial mismanagement

### **413-215-0026 Financial Management**

(1) *Budget.* An agency (defined in OAR 413-215-0006) must operate under an annual line-item budget, showing planned expenditures and sources of income, which has been approved by the governing board as the plan for management of its funds.

(2) *Funding.* The annual budget of a licensee (defined in OAR 413-215-0006) must document that the licensee has sufficient funds to meet the requirements of licensure, to operate the programs the licensee is licensed to operate, and to provide the services the licensee has stated the agency (defined in OAR 413-215-0006) will provide.

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There are concerns regarding CYFS' assets and ability to project revenues and expenses. A DHS auditor concluded on March 30, 2016 CYFS projected a \$25,202 profit during the eight month period ending February 29, 2016, but the actual result was a \$201,518 loss. CYFS has expressed doubt about its ability to meet payroll deadlines and has requested advances for services provided ahead of DHS's reimbursement schedule. The agency further concluded CYFS is on a trajectory to insolvency and issued a number of corrective actions. The corrective actions included completing a financial audit and submitting an updated projected budget explaining CYFS' aggressive revenue increase and expense reduction projections. CYFS responded to agency corrective actions on May 20, 2016. Based on DHS' preliminary review, the response is not adequate to address the financial condition. At this time, CYFS remains on a trajectory to insolvency which would render it unable to meet program funding requirements in violation of ORS 413-215-0026.

## 6. Revocation

### **413-215-0006 Definitions**

As used in OAR 413-215-0001 to 413-215-0131:

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(8) "Substantial compliance" means a level of adherence to the rules in Division 413-215 and other applicable law that, although failing to meet one or more of the requirements of these rules, in the Department's estimation does none of the following:

(a) Constitute a danger to the health or safety of any individual.

(b) Constitute a willful or ongoing violation of the rights of children or families served by an agency.

(c) Prevent the accomplishment of the Department's purposes.

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### **413-215-0121 Denial, Suspension, or Revocation of License**

(1) Except as provided in section (2) of this rule:

(a) The Department may deny, suspend, or revoke a license upon finding that an agency (defined in OAR 413-215-0006) is not in substantial compliance (defined in OAR 413-215-0006) with the rules in Division 413-215.

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CYFS is not in substantial compliance with OAR 413-215-0001 through OAR 413-215-0131 and OAR 413-215-0501 through OAR 413-215-0586. Pursuant to OAR 413-215-0121(1)(a) DHS may revoke a license upon finding that an agency is not in substantial compliance with the rules in Division 413-215.

CYFS' practices and actions described herein constitute a danger to the health and safety of its residents and prevent the accomplishment of DHS's purposes—to provide safety and well-being. CYFS' failures have resulted in multiple substantiated findings of neglect, abuse, and maltreatment. In consideration of the numerous critical events reported from CYFS over the past few months, CYFS is not in substantial compliance with agency rules, which is a ground for revocation of its license to operate a residential care facility.

The above-described violations and practices constitute a substantial failure to comply with the applicable statutes and administrative rules. To qualify for continued licensure, CYFS is obligated to comply with the administrative rules regulating licensing residential care agencies and the broader licensing umbrella rules. CYFS fails to do so as indicated by its past and continuing actions including: (1) failing to comply with mandatory reporting requirements, and the requirement to report critical events to DHS within one business day; (2) providing inadequate supervision and protection to children that has resulted in OAAPI substantiated findings of neglect while children engaged in dangerous and criminal activities; (3) failing to provide adequate training so that staff can perform their duties effectively and safely for themselves and the clients; (4) failing to comply with emergency procedures and protocols in a life-threatening situation; and (5) failure to demonstrate adequate funding. CYFS has violated essential requirements relating to the necessary care and services to its residents on a continuing basis and therefore amounts to a substantial failure to comply with the applicable statutes and administrative rules.

Based on the reasons set forth above, DHS hereby provides notice of its intent to revoke the License of Residential Care Facility held by CYFS pursuant to OAR 413-215-0121.

During this period while the proposed revocation is pending, DHS reserves the right to take further and/or immediate action if necessary to protect the health, safety, and welfare of youth.

#### **IV. Notice of Opportunity for Hearing**

Pursuant to the Administrative Procedures Act (ORS Chapter 183) and OAR 413-215-0121, you have the right to a contested case hearing in this matter. To request a hearing, you must submit your request in writing to the Department of Human Services' Licensing Unit within 30 days of the date DHS mailed the notice of revocation. The hearing would be held before an administrative law judge pursuant to the Administrative Procedures Act described in the contested case procedures (ORS 183.310 through 183.550) and the Attorney General's Model Rules of Procedure (OAR 137-003-0000 through 137-005-0070).

If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation, and other rights of parties related

to the conduct of the hearing before commencement of the hearing. You may request a hearing by sending your request to:

Harry Gilmore, Manager, Children's Care Licensing Unit  
Office of Licensing and Regulatory Oversight  
Department of Human Services  
PO Box 14530  
Salem, OR 97309

If you do not request a hearing within 30 days of the mailing of this notice, you will have waived your right to hearing and DHS may issue a final order by default and revoke your license. If you waive your right to a hearing, withdraw a hearing request, notify DHS or the Administrative Law Judge that you will not appear at the hearing as scheduled, DHS may also issue a final order by default and revoke your license. DHS has designated the relevant portion of its files on this matter, including all materials that you have submitted relating to this matter, as the record in this case for the purposes of proving a prima facie case upon default.

**V. Notice of Right to Legal Representation**

You have the right to be represented by counsel. Legal aid organizations may be able to assist those with limited financial resources. If you are an agency, corporation, partnership, limited liability company, trust, government body or an unincorporated association, you must be represented by an attorney licensed in Oregon.

**VI. Notice to Active Duty Servicemembers**

Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2016.

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Tom Van Der Veen  
Licensing & Regulatory Oversight, Interim Director  
Department of Human Services