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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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NO. 37787-0-II

COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

Annette Atkinson, Appellant

v.

Department of Social & Health Services  
of the State of Washington

Brief of Appellant

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I. PREFACE

This brief is intended to assist the court in resolving the issues presented by the request for review of the Writ of Mandamus & Prohibition relating to expungement from DSHS records an alleged prior licensing finding from 2002. The request for review of the Writ of Mandamus is based on the record. For the court's ease of use, and the sake of brevity, the record on review consists of, and will be referred to, as follows:

Original Agency Transcripts Verbatim Report of Proceedings:

- December 13, 2005 (13 pages).....VRP 1
- February 18, 2006 (26 pages).....VRP 2
- March 8, 2006 (265 pages).....VRP 3
- March 9, 2006 (276 pages).....VRP 4
- March 15, 2006 (114 pages).....VRP 5

Please note that VRPs 1&2 are not at issue and will not be cited.

Original Agency Exhibits

Review Petition Exhibits will be cited by their original numbers, (State Exhibits) and letters (Petitioner Exhibits) and by relevant page cites.

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Declarations originally submitted under the Trail Brief of  
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Numerals, and attached to this Brief.

All other documents will be referred to by  
description/Name and sub #.

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<u>Wimberger v. State Dept. of Health</u> , <a href="http://www.doh.wa.gov/hearings/orders/">http://www.doh.wa.gov/hearings/orders/</a>	

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**ASSIGNMENTS OF ERROR**

1. The ALJ erred in her finding that there was no credible evidence that Ms. Atkinson had been directed to allow Tonya to access her medicine.
3. The Superior Court erred in denying the Writ of Mandamus and Prohibition.

**ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

- 1.1 Whether the relevance of the document, Tonya's Health and Safety Crisis Plan, Exhibit 33, p.4 is supported by evidence? IO, p. 15, fact #39.
- 1.2 Whether or not there is substantial evidence to support the ALJ's finding that Linda Miller would not have approved Tonya administering her own medication. IO, p. 15, fact #39.
- 1.4 Whether the ALJ adequately considered all circumstances and relevant facts as they pertain to Ms. Atkinson's claim of innocence.
- 2.1 Was the conclusion by Judge Costello, that the issue at hand was considered in the 2005 hearing contesting the revocation of Ms. Atkinson's license and the ALJ simply ruled against her based on substantial evidence?

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2.2 Does Ms. Atkinson have a protected interest guaranteed protection under the fourteenth amendment?

2.3 Was Ms. Atkinson's interest denied her without due process, a guarantee of both the U.S. and Washington State Constitutions?

3.3 Is Writ of Mandamus the appropriate relief?

**STATEMENT OF THE CASE**

On May 20, 2002, Exhibit 13, shows there was an incident involving medication management. A child named Tonya had been placed in Ms. Atkinson's foster care. Tonya was approaching 18 years of age, at which time her state funding and support would be withdrawn, and she would be on her own, managing her own medications and affairs. VRP 4, p 189.

According to Ms. Atkinson, it was decided at a staffing in which she, the social worker, and a staffing team of involved professionals resolved to allow Tonya to self medicate, to ready herself for the imminent date of her emancipation and self-care. VRP 4, p. 190. This was discussed in the context of a Volunteer Placement Agreement, or VPA, under which she, Tonya, would consent to ongoing supervision. VRP

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4, pp. 159, 189. While Exhibit 36 reflects the team discussion on April 12, 2002 about the VPA, and Tonya practicing in the VPA, a formal VPA was never actually entered, VRP 4, p. 160, and no copy of it and its contents could be located four years later. VRP 4, p. 164. Ms. Atkinson did not feel she could ignore the team directives to permit Tonya to self medicate, VRP 4, p. 271, so she followed the directives.

Tonya abused her ability to self-medicate, and claimed to have taken an intentional overdose with her medications, requiring a trip to the hospital on May 20, 2002, Exhibit 13. It was a false alarm, as Tonya had not actually taken extra medications. Exhibit 14.

As a result of that incident, the DSHS licensor, Matt Cleary, contacted the Agency licensor, from Catholic Community Services, Donna Smith, Exhibits 30, 13, p.2. VRP 3, page 29, to clarify that all medications should be locked up. His record has the following entry:

She [Ms. Atkinson] thought she was following the regulations, because this child was being prepared for independent living, and she [Ms. Atkinson] was following the directions of the child's social worker.

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Mr. Cleary did not recognize the significance of the issue under WAC 388-48-0365, which permits self medication by a child if permitted in writing by the social worker, as acknowledged by Witness Tosti-Lane, supervisor of regional licensors for DSHS. VRP 3, pp. 210-214.

Mr. Cleary did not follow up in his investigation to determine if and why the social worker permitted self medication, or if there were any written instructions to do so. Exhibit I. Ms. Tosti-Lane also acknowledged that it did not appear that Mr. Cleary investigated Ms. Atkinson's claim to have had permission from the social worker and Ms. Toste-Lane further agrees that the correct time to have asked the question would have been in 2002 when information and memories would have been clear. VRP 3, pp. 213-214.

The Catholic Community Services Licensor then met with Ms. Atkinson, and counseled her that Tonya's medications need to be locked up; which seemed fairly obvious to Ms. Atkinson after the incident. Ms. Atkinson was not made aware that this issue would be used in future licensing action against her. VRP 4, p. 244, 245. That was the extent of the investigation

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and of any formal action taken by the department as to that incident. No formal notice was given to Ms. Atkinson that any finding had been made against her, which would affect her later licenses. She was never advised of the formality and consequences of this finding, VRP 4, p. 193, and never given an opportunity to contest it at that time.

At the time of the hearing in 2006, Ms. Smith, the former Catholic Community Services Licensor, was familiar with WAC 388-148-0365, as she had been shown a copy by the State's counsel just prior to her testimony, and had reviewed it. VRP 5, p. 22. After so much time, Ms. Smith could not recall specifically going over the WACs with Ms. Atkinson, VRP 5, p. 16, but that would be her usual practice. It is however clear that she did not go over WAC 388 in its entirety as she was unaware of WAC 388-148-0365, and miss quotes the authority given her by the WAC. Exhibit 14.

After so much time, Ms. Smith could not recall if she checked with Social Worker Lynda Miller about permitting or directing Tonya's self medication. VRP 5, p. 21. After so much time, Ms. Smith could not recall if she asked for Ms. Atkinson to produce the

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4 written directions from the social worker for Tonya to  
5 self-medicate. VRP 5, p. 23. When questioned by  
6 defense counsel as to the importance of questioning  
7 Ms. Miller Ms. Smith hands the responsibility off to  
8 the Department. VRP 3, pp 21

9 Q: ...Did you check with Linda Miller to see if  
10 in fact that was true back at that time?

11 A: Not that I can recall.

12 Q: Would that not have been relevant to you in  
13 investigating this issue to see if further  
14 licensing would be important.

15 A: Yes I can see that would be, although there  
16 is DLR investigations that take priority  
17 over our own investigation.

18 The department, through their agent Matt Cleary  
19 the DLR/CPS Investigator, stated,"....I contacted the  
20 foster parent licensor for CCS, Donna Smith regarding  
21 the allegations. Ms. Smith investigated the incident  
22 and reported back to me..." , Exhibit I, line 22-24.  
23 The facts are no one investigated Ms. Atkinson's known  
24 claim of innocence in 2002.

25 On June 3, 2002, the Agency licensor Donna  
26 Smith wrote the letter, Exhibit 14, which mis-states  
27 the law as to medications. She wrote:

28 The reason Tonya has access to her own  
medications was because Annette understood that  
she was following the intentions of Tonya's  
treatment plan, put in place by her social  
worker, Lynda Miller. The plan directed Tonya to

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4 be treated as if she had already turned 18 years  
5 of age, except for any legal actions. This also  
6 included Tonya being able to administer her own  
7 medications, which is a violation of WAC 388-148-  
8 0350(3):

9 "Only you or another authorized care provider may  
10 give or have access to medications for the child  
11 under your care;"

12 and further:

13 I feel confident that everyone concerned  
14 understands that a child's social worker does not  
15 know DLR regulations, and so when a question  
16 arises it should be directed to the licensor-  
17 myself.

18 In fact, Ms. Smith was plain wrong. WAC 388-148-  
19 0365 permits self medication by a child if authorized  
20 in writing by the social worker, [not the licensor].  
21 Exhibit F, VRP 3, p.205 (qualifying it as the version  
22 in effect in 2002). It states:

23 When may children take their own medicine?

24 (1) You may permit children under your care to  
25 take their own medicine as long as:

26 (a) They are physically and mentally  
27 capable of properly taking the  
28 medicine; and

(b) The social worker or guardian if  
they have custody, approves in writing.

(2) You must keep the written approval by the  
child's social worker in your records.

(3) When a child is taking their own medication,  
the medication and medical supplies must be kept

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locked so they are inaccessible to unauthorized persons.

The State Licensor Cleary, and the Agency Licensor Smith were both unaware of this WAC, and therefore unaware that Ms. Atkinson's actions were completely authorized and permitted under the WAC, and therefore took no steps to verify or investigate Ms. Atkinson's claim to be innocent by virtue that she had been instructed by the Social Worker to have Tonya self-medicate. Ms. Smith agreed that if Atkinson had such written permission at the time, there would have been no negative licensing implications at all. VRP 5, p. 24.

Ms. Atkinson was unaware that this 2002 incident would be entered in the records as a licensing finding against her. She was unaware that she was being blamed for the incident, or found at fault, as she had the express authority of the social worker and the staffing group to permit Tonya to self-medicate. She was never advised of the formality and consequences of this finding, VRP 4, p.193, and never given an opportunity to contest it at that time. Ms. Tosti-Lane concurred that it is possible for a valid

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3 licensing to be entered against a foster parent and  
4 they not be aware of it. VRP 3, pp. 210  
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6 Ms. Atkinson was advised that the issue with  
7 Tonya's medication was nothing to be extremely  
8 concerned about. VRP 4, p. 244. In fact, she was re-  
9 licensed as a foster parent and no mention was made to  
10 her or the private licensing agency, Kitsap Mental  
11 Health (KMH), about the 2002 incident, and it did not  
12 prevent her from being re-licensed. VRP 4, pp.78-81.  
13 VRP 3, pp. 77. Ms. Welch, the licensor for KMH goes on  
14 to say that if there was an issue of concern for DSHS  
15 in a foster parent file they would bring it to her  
16 attention, however no information was shared regarding  
17 Ms. Atkinson. VRP 3, pp. 81.  
18

19 Ms. Atkinson first became aware of this finding  
20 on September 28, 2005, almost three and a half years  
21 later, when it was referenced in the department's  
22 actions revoking her license, and making a finding of  
23 abuse/neglect, Exhibit 15, pp, 2,4, VRP 4, p. 195. By  
24 that time, Ms. Atkinson had destroyed all records  
25 relating to Tonya, as the department required. VRP 4,  
26 pp. 192-193. Ms. Atkinson subpoenaed records,  
27 including SERs from the department that had been lost.  
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VRP 4, p. 156. Memories had faded. VRP 4, p. 192 (Annette Atkinson), VRP 4, p. 155 (Lynda Miller), VRP 5, p. 14, l. 19 (Donna Smith). Other witnesses had changed employment and were denied access to their own records from that time. VRP 5, p. 14.

Ellen Turner, Abuse/Neglect Investigator for the State testified that the State includes in their risk assessments even allegations which were determined not to be founded. VRP 3, p. 166-170.

Q: If it has been investigated and it was determined that this foster parent was acting under this authority would you still consider this in your risk assessments being a pattern of incidents that would increase your risk assessment of that foster parent?

A: It would still be listed as I said we - - we're required to list all of the prior complaints, so it would still be listed. It might say not valid, that it was not valid or unfounded. But it would still be listed. It's still - - it's still - - the number of referrals is considered a risk factor, again, I didn't write the matrix. I'm not sure what the thinking is on it but that is something that we have to include.

Testimony at trial showed that, as to licensing findings, the affected person may not even be advised of a negative mark in their licensing file, VRP 3, p. 210, l. 8, and there are no appeal rights from such a finding. VRP 3, p. 210, l. 5.

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That practice of using even unfounded allegations against a licensed foster parent in licensing action was reaffirmed by Macie Marr. VRP 5, pp. 48-54. She said "the referral will always be there" for use of the department, VRP 5, p. 51, even if the referral was unfounded or was never investigated by the department.

This 2002 incident was a large part of the department's reasons for taking licensing action against Ms. Atkinson, who was known to be a very valuable and capable foster parent, and was a significant part of the evidence presented at the hearing. VRP 3, pp 40-45, VRP 3, 199-202, VRP 5, p. 40. Stated succinctly in the State's opening statement, "she made the same mistake twice." VRP 3, p. 42, l. 16. The CPS Abuse/Neglect Investigator referred to it as a "similar incident" in a prior referral. VRP 3, p. 131. The investigator referred to corrective action previously taken as a result of the prior incident. VRP 3, p. 144. The State worker who wrote the license revocation and finding of abuse, Macie Marr, stated that the 2002 incident showed that Ms. Atkinson had extensive training in the medication

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3 regulations "after she violated the WAC the first  
4 time" and should know. VRP 5, p. 40. Further, she  
5 stated that Ms. Atkinson "should have learned from her  
6 first mistake." VRP 5, p. 41. In closing argument,  
7 at VRP 5, p. 110, the state argued:

9 She had already been given the famous one bite of  
10 the apple with Tonya. And she didn't learn and  
11 when you have someone who just doesn't seem to  
12 learn then you cannot trust them with vulnerable  
13 children in the care of the State of Washington.

14 As stated by Ellen Turner and Macie Marr in the  
15 testimony at the hearing, this 2002 incident will  
16 always be there whenever Ms. Atkinson submits to a  
17 record check. VRP 5, p. 51.

18 **STATEMENT OF PROCEDURAL HISTORY:**

19 Ms. Atkinson was advised that her foster care  
20 license was revoked by letter dated September 28,  
21 2005, Exhibit 15. She was also advised that the  
22 department had made a finding of child abuse/neglect  
23 against her by Exhibit 2, a letter dated August 30,  
24 2005, and exhibit 1, a letter dated November 14, 2005.  
25 She appealed both of those findings by letter dated  
26 October 19, 2005, exhibit 17, and by letter dated  
27 November 18, 2005, exhibit 3. Administrative Law Judge  
28 Rebeccah Ross heard live testimony on March 8, March 9

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and March 15, 2006. Judge Ross ruled that the Allegation of Abuse/Neglect was UNFOUNDED, but upheld the revocation of the license. Bates Stamp 84-120. Specifically, she found that access to one day's lithium did not meet the statutory and WAC definition of negligent treatment or maltreatment. Conclusions of law 1-11, bates stamp 104-108. She did sustain revocation of Ms. Atkinson's foster care license and found that the State proved a violation of regulations, WAC 388-148-0352 and WAC 388-148-0205 by leaving medications unlocked. Conclusions of law 18, 19, bates stamp 111, 112. ALJ Ross also found that Ms. Atkinson violated WAC 388-148-100(1)(c) as she failed to maintain a safe healthy and nurturing environment for children. Conclusion of law 29, bates stamp 117-118. ALJ Ross also found that the department met the lax "reasonable cause to believe" standard for a violation of WAC 388-148-0035(1), that Ms. Atkinson did not demonstrate the understanding and ability to meet the needs of children in her care. Conclusions of law 30, 31, bates stamp 118. As there were violations of WAC regulations, the revocation decision was sustained under R.C.W. 74.15.130.

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Counsel for Appellant withdrew. Bates stamp. 72.

Ms. Atkinson, acting pro se, appealed the finding as to the license revocation, bates stamp 74-83, and the Department, after being granted a time extension, bates stamp 71, filed a cross-petition for review of the ruling adverse to them, as to the finding on the allegation of Abuse/Neglect. Bates stamp 64-70.

The Board of Appeals, and specifically Review Judge Marjorie Gray, reversed ALJ Ross's determination that neglect allegation was unfounded, and sustained the foster care license revocation. Bates stamp 20-60.

A request for reconsideration by Ms. Atkinson was filed on August 15, 2006. Bates stamp 12-19. The State filed a response on August 23, 2006. Bates stamp 8-10. A decision and order denying reconsideration were entered on September 5, 2006. Bates stamp 1-5.

Ms. Atkinson again retained her prior counsel and A Petition for Review was timely filed, seeking review only of the Finding of Abuse/Neglect, and not of the license revocation. The Petition for Review was filed along with a Petition for Mandamus, seeking relief

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from the 2002 adverse licensing finding. The State filed a response on January 14, 2008. The court entered a decision overturning the finding of Abuse/Neglect and denying the Petition for Mandamus on April 25, 2008. Ms. Atkinson, then through her attorney, entered a Motion to Reconsider the denial of Mandamus on May 5, 2008.

After receiving correspondence from the Judge on May 9, 2008, Ms. Atkinson, acting pro se, filed a premature Notice of Appeal on May 23, 2008. The court order denying the Motion to Reconsider was not entered until July, 31, 2008 at which time Ms. Atkinson's Appeal was accepted.

**SUMMARY OF ARGUMENT**

Ms. Atkinson argues this case from two different vantage points;

1. that she was not afforded timely due process when the "valid" licensing was entered against her in 2002 and
2. the conclusions of the court when she was allowed to defend herself contained error.

Ms. Atkinson's was denied due process by the department when they entered a, "valid" licensing

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finding against her in the departments CAMIS system in 2002. The department did not investigate her claim of innocence and she was not given an opportunity to defend the allegation in a timely manner. Ms. Atkinson was then further denied her protected liberties as a result of the finding and its future use to establish a pattern of violation.

The lack of due process is supported by a Doctrine of Laches analysis.

A Review of case law shows that Ms. Atkinson's interests and liberties, affected by the departments actions, are protected and should be afforded due process under the US Constitution.

The hearing before Judge Ross in 2005, did not meet the test for due process as outlined above. In addition the conclusions of ALJ Ross, that there was no credible evidence that Ms. Atkinson had been given authority by the social worker to allow Tonya access to her medication, is not supported by "substantial evidence" and therefore is "Arbitrary and Capricious" giving this court the authority to overturn them. Judge Ross based her decision on, "clearly erroneous"

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4 facts, made inferences not based on logic or reason  
5 and not supported in light of the full record.

6 In Judge Costello's memorandum decision denying  
7 Mandamus he states,

8 .....It appears from the review of the record  
9 that the 2002 licensing incident was considered in the  
10 2005 hearing contesting revocation of her license and  
11 that the ALJ simply ruled against her.

12 There are two issues at play here:

- 13
- 14 • The inference that the ALJ simply ruled against  
15 Ms. Atkinson is not supported by "substantial  
16 evidence" in light of the full record and;
  - 17 • the lack of review as to whether or not the  
18 hearing in 2005 afforded Ms. Atkinson her right  
19 to due process.

20 The simple facts are due to the negligence of  
21 DSHS employees, Ms. Atkinson has been denied protected  
22 liberties. In 2002 the Department's employee, Matt  
23 Cleary DLR/CPS investigator, entered a "valid"  
24 licensing finding for failure to lock up medicine in  
25 Ms. Atkinson's file. At that time Ms. Atkinson  
26 claimed to be following the direction of the child's  
27 social worker, which would have made her actions not  
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in violation of the regulations. However Mr. Cleary did not see any reason to investigate the claim, as he was unaware of the regulation that would have substantiated Ms. Atkinson's claim of innocence, and instead found her guilty.

Ms. Atkinson was not afforded an opportunity to dispute Mr. Cleary's finding until almost four years later. At which time any evidence, which would have supported her claim was unavailable. The lack of available evidence, was through no fault of Ms. Atkinson's and it negatively prejudiced her defense. The request by the department for Ms. Atkinson to defend herself at this time, in light of all the facts and circumstances, is fundamentally unfair.

**Applicable Standards of Review**

There several standards of review applicable in this case; "Arbitrary and Capricious" similarly referred to as "Substantial Evidence", "Clearly Erroneous", the question of constitutionality and the question of whether or not the agency as failed to follow a prescribed procedure. RCW 34.05.570, Judicial Review outlines the authority of this court,

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which standard of review is appropriate and when relief is to be granted:

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;.....

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;.....

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i)The order is arbitrary or capricious.

Their are two basic standards of review required for addressing assigned error number one; ALJ's error in finding that there was not credible evidence that Ms. Atkinson had been directed to allow Tonya to access her medication. The first standard is that of "Clearly Erroneous" and the second is that of "Arbitrary and Capricious" or "Substantial Evidence"

Three standards of review are required when addressing assigned error number two; The Superior

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Court's error in denying the Writ of Mandamus. The first standard is that of "Arbitrary and Capricious", the second is one of Constitutionality. Thirdly in making a decision to grant relief in this case the court must look at whether or not the agency followed prescribed procedures and their own rules throughout the process.

In the case of the issues being reviewed under the standard of "Clearly Erroneous" , constitutionality, or failure to follow procedure there doesn't appear to be a need for further clarification or discussion, until the argument section. However in regards to the issues being reviewed under the "Arbitrary and Capricious" or "Substantial Evidence" standard there is.

There is a myriad of definitions and interpretations of the term "Arbitrary and Capricious" presented in an unlimited number of cases. Most of these cases, as they pertain to administrative issues, also try to define, "substantial evidence". Agency findings of fact, of which this entire case hinges on, are held to review by substantial evidence. Case law

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further supports that any finding that is supported by substantial evidence is not "Arbitrary and Capricious"

The Lectric Law Library's Lexicon on Substantial Evidence, <http://www.lectlaw.com/def2/s087.htm> is as follows:

Substantial evidence means "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 US 389, 401 (1971).....Substantial eveedince is not synonymous with "any" evidence. To constitute sufficient substantiality to support the verdict, the evidence must be "reasonable in nature, credible, and of solid value: it must actually be substantial"....."While substantial evidence may consist of inferences, such inferences must be a product of logic and reason and must rest on the evidence..." Kuhn v. Department of General Services (1994) 22 Cal. App.4th 1627, 1633.

The Lectric Law Library also provides assistance in trying to define "Arbitrary and Caprcious", <http://www.lectlaw.com/ def/a064.htm>:

Absence of a rational connection between the facts found and the choice made. Natural Resources. v. U.S., 966 F.2d 1292, 97, (9th Cir.'92). A clear error of judgment; an action not based upon consideration of relevant factors and so is arbitrary, capricious, an abuse of .

When a judge makes a decision without reasonable grounds or adequate consideration of the circumstances, it is said to be arbitrary and capricious and can be invalidated by an appellate court on that ground. There is, however, no set standard

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for what constitutes an arbitrary and capricious decision; what appears arbitrary to one judge may seem perfectly reasonable to another.

This brief will show that under the above standards of review the appellate court must find in favor of the Appellant.

**Argument of Assigned Error #1**

ALJ Ross in her Initial Order p. 15, fact#39 stated:

Tonya's Health and Safety Crisis Plan noted that a risk factor was that her feelings of sadness would make Tonya want to harm herself or engage in aggressive behavior. One of the preventative strategies listed was to keep medication locked up, Exhibit 33".

This exhibit clearly lists me as the former foster parent and is signed and dated after Tonya was removed from my home, verified in the record by Linda Miller VRP4, P169. This fact is "Clearly Erroneous" and not supported by, "Substantial Evidence "and should not be used as a basis for the ALJ's decision of no credible evidence.

The remainder of the issues must be looked at in whole, and a determination as to whether the

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4 conclusion of the ALJ, given all the information  
5 provided, was "Arbitrary and Capricious" and lacking,  
6 "Substantial Evidence". ALJ Ross made a clear error  
7 in judgment based on:

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- 9 • "clearly erroneous" facts as shown above.
  - 10 • inadequate consideration of the circumstances.
  - 11 • inadequate consideration of relevant factors.

12 All of the above factors led to a finding of  
13 fact that was without reasonable grounds and therefore  
14 arbitrary and capricious and can be invalidated by an  
15 appellate court on that ground. Unfortunately there  
16 does not appear to be a set standard for what  
17 constitutes an arbitrary and capricious decision; what  
18 appears arbitrary to one judge may seem perfectly  
19 reasonable to another.

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21 We propose that the following outline of the  
22 facts would lead a reasonable mind to only one  
23 conclusion, there is credible evidence that  
24 Ms. Atkinson had permission to allow Tonya access to  
25 her medication, and that this conclusion is supported  
26 by, "Substantial Evidence" and

27 ALJ Ross was "Arbitrary and Capricious" in her  
28 decision.

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4 The finding of fact IO, p. 15, # 39 that is at  
issue her states:

5 Tonya's social worker, Linda  
6 Miller, would not have approved Tonya  
7 administering her own medication due to her  
8 significant and chronic mental health  
9 issues, including substance abuse issues,  
10 Miller testimony.

11 The above statement does not give a clear picture  
12 of Ms. Miller's testimony. We had requested the SERs  
13 (service episode records) relating to Tonya from that  
14 time, to verify the staffing conclusions and the  
15 Social Worker's permission to let Tonya self-medicate,  
16 but they reportedly could not be found. VRP 4, p.  
17 155. For the hearing we requested the presence of  
18 Lynda Miller on March 9, 2006. She was the social  
19 worker who was responsible for Tonya, as we wanted and  
20 expected her to verify the fact that self-medication  
21 by Tonya was permitted by her. VRP 3, p. 8. Before  
22 we could ask any questions of her, she was examined  
23 first by the State's attorney, and, although she had  
24 no recollection of whether self-medication was in fact  
25 authorized by her, VRP 4, p. 148, was led to the  
26 conclusion that she would never have done so, VRP 4,  
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p.149, by a series of questions about Tonya's self-destructive past. VRP 4, pp. 108-149. However later in her testimony under the questioning of the defendant's attorney Ms. Miller indicated that it would not be illogical to discuss medication management as part of Tonya's preparation for independence, but could not recall if it was or was not specifically discussed. VRP 4, p. 163.

In looking at Ms. Miller's testimony it is also important to look at the department's inability to produce essential documents from the case. Unfortunately, the SERs, essentially a diary of the caseworker, could not be located and were unavailable for Ms. Miller to review prior to her testimony, VRP 4, pp. 154- 155. Ms. Miller acknowledged that to review her SERs would help refresh her memory. VRP 4, p. 156. The SERs also would have diaried her contemporaneous response to the issue of May 20, 2002. VRP 4, p.165. Had she authorized Tonya to self-medicate, that would be entered in the SERs. VRP 4, p. 171.

Ms. Miller had no recollection of anyone ever asking her after Tonya's medication overdose whether

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3 she had authorized self medication by Tonya. VRP 4,  
4 p. 167. She acknowledged that it was difficult to  
5 remember after four years. VRP 4, p. 168.  
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7 The statements, if read closely from Linda  
8 Miller, clearly show she does not remember exact ally  
9 what occurred in respect with Tonya's medication.  
10 Therefore we conclude that the ALJ erred in her  
11 finding that Ms. Miller did not give permission for  
12 Tonya to self medicate.  
13

14 Now we must look at the whole, accurately  
15 interpreted record regarding the 2002 incident. As  
16 shown above facts relied on by ALJ Ross were incorrect  
17 and others were not given significant weight. We also  
18 claim that ALJ did not consider all evidence or  
19 circumstances in drawing her conclusion that there is  
20 no credible evidence to support Ms. Atkinson's claim  
21 of innocence. The facts as they should have been  
22 looked at are as follows:  
23

24 The Health and Safety Plan of Tonya presented by  
25 the defense, as evidence that medicine was to be  
26 locked up was written after the incident and never a  
27 directive given to Ms. Atkinson. Exhibit 33, VRP 4 p.  
28 169.

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Ms. Miller, the Social Worker, with the authority to allow Tonya to self medicate, cannot remember if she gave permission or not. She does not recall anyone asking her in 2002 if she had given permission. VRP 4 p. 130 VRP 4 p. 147-148.

Ms. Smith's testimony where she is unable to recall any specifics of the case. VRP 5 p. 21 & 23.

The State's inability to produce subpoenaed documents, including the VPA. VRP 4, p. 164-168, VRP 5, p. 6

The credible evidence of Ms. Atkinson's claim of innocence, which was contemporaneous in to time to the event. Exhibit 14 and Exhibit I, A claim which the department due to ignorance did not investigate.

No investigation was conducted to substantiate or falsify Ms. Atkinson's claim of innocence until 2006. VRP 5, p. 21 -23.

The ALJ herself recognizes the evidence and memories are tainted by time. IO, conclusion #26, p. 33. VRP 4 p. 155, VRP 5, p.14

The outline above clearly shows the department failed to perform their duty to investigate claims of child negligence, a prescribed procedure. The ALJ

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made a finding of fact that was not supported by, "substantial evidence" Ms. Atkinson claimed to be innocent; the department through ignorance and negligence found her guilty without an investigation. Four years later Ms. Atkinson was asked to defend the charge, she was now not alleged to have committed, but the charge she had already been found guilty of.

No matter how you add up the facts there is certainly evidence that Ms. Atkinson had permission. Her claim of the fact is well documented by the department. There is no evidence to the contrary. There is not one document that the department can produce, that would indicate Ms. Atkinson did not have permission. There is no evidence, contemporaneous in time, that Ms. Atkinson did not have permission to allow Tonya to manage her medication. There is only faulty, four year old assumptions, based on the hypothetical.

**ARGUMENT OF ASSIGNED ERROR #2**

There are two main elements at play in this error; whether the court's interpretation of the ALJ's decision as one where she, "simply ruled against her",

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4 and the lack of justice afforded Ms. Atkinson  
5 throughout this entire process.

6           Although it is true the ALJ stated, "I find there  
7 is no credible evidence that written permission was  
8 given by Tonya's social worker that she could self  
9 administer her own medication", IO, #40, page 15. This  
10 statement was concluded from eroded facts as presented  
11 previously in this document. In addition the ALJ also  
12 states,

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14           " I recognize that had Ms. Atkinson been given  
15 the opportunity to challenge the valid finding  
16 back in 2002, there might have been evidence at  
17 the time, including full service episode records  
18 and fresher memories, that might not now be  
19 available." She further states, " I have made no  
20 findings concerning the Department's  
21 consideration of whether a person had a history  
22 of allegations, as this is not relevant to my  
23 consideration.."

24           The facts are the ALJ did not find the incident  
25 with Tonya to be relevant to her decision and made no,  
26 ruling regarding same. The ALJ also recognized the  
27 importance in the lapse of time since the incident and  
28 Ms. Atkinson's chance to defend herself. Which leads  
directly into the second issue, lack of due process  
when removing a protected interest; the crux of our  
Argument for Writ of Mandamus.

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In order to determine if Ms. Atkinson's rights, guaranteed by the Fourteenth Amendment, where violated, we must look at the definition of due process and protected interests. Neither of these concepts is easily defined; but rather must be looked at in light of each individual case and the facts surrounding it.

Several courts have concurred that to define appropriate due process one must weigh the competing interests of the private person and the government, the risk of false findings given current procedures, and the additional cost to the government for instituting additional safeguards.

This process of defining due process was aptly laid out by the court in Redmond v. Moore, 151 Wn.2d 664, 91 P.3e 875 (2004). Where the court recognized at page 670:

To determine whether existing procedures are adequate to protect the interest at stake, a court must consider the following three factors:  
First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest including the function involved and the fiscal and administrative

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burdens that the additional or substitute procedural requirement would entail. Mathews, 424 U.S. at 335, cited in *Tellevik v. 31641 W. Rutherford St.* 120 Wn. 2d 68, 78, 838 P. 2d 111 (1992)

The first prong of the above test requires us to look at the interest at stake by the private party. Several courts have tried to define what is considered a protected interest. In *Campanile v. Bockrath*, 100 F.3d 1476 (9th cir. 1996) the court ordered that a state may not deprive a person of his liberty interest "to engage in any of the common occupations of life" without due process of law. In the matter of the Board of Regents v. Roth, 408 U.S. the Supreme Court said,

While this Court has not attempted to define with exactness the liberty...guaranteed [by the Fourteenth Amendment], the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, .....and generally enjoy privileges long recognized.....as essential to the orderly pursuit of happiness of a free man. *Myer v. Nebraska*, 262 US. 390,399. In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed. See, e.g. *Bolling v. Sharpe*, 347 US., 497, 499-500; *Stanely v. Illinois*, 405 US. 645

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4           When a foster parent is labeled with a "valid"  
5 licensing finding many protected interests are at  
6 stake. The "valid" finding becomes part of a risk  
7 matrix that the department looks at anytime a  
8 background check is requested. In the case of Ms.  
9 Atkinson this background check is required for  
10 employment, volunteer activities, and internships for  
11 her Master's Program in counseling psychology. The  
12 affects of the label are brought into question by via  
13 university applications and child adoption procedures  
14 as well. The "valid" finding has tarnished Ms.  
15 Atkinson name and reputation.  
16

17           The protected interest in a person's good name  
18 has been litigated in court. In Conctantineau v.v  
19 Wisconsin, the government posted a list of, "excessive  
20 drinkers" without due process. In the case the US  
21 supreme court concluded that the person being listed  
22 has a right to some form of hearing before such a list  
23 could be posted. In the Board v. Regent the court  
24 said, "For where a person's good name, reputation,  
25 honor, or integrity is at stake because of what the  
26 government is doing to him, notice and opportunity to  
27 be heard are essential."  
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Other courts have concluded the loss of a good name alone is not enough but the loss must be one of, "stigma plus". In Cannon v. City of West Palm the U. S. 11th Circuit Court of Appeals said,

In Paul v. Davis the Supreme Court held that defamation by the government, standing alone and apart from any other governmental action, does not constitute a deprivation of liberty or property under the Fourteenth Amendment. 424 US 693,694,96 S.Ct 1155,1157 (1976). The court established what has come to be known as the "stigma-plus" test. See Moore v. Otero, 557, F.2d 435, 437 (5th Cir. 1977). Essentially, a plaintiff claiming a deprivation based on defamation by the government must establish the fact of the defamation "plus" the violation of some more tangible interest before the plaintiff is entitled to invoke the procedural protection of the Due Process Clause. Paul, 424 US at 701-02, 96 S. Ct. at 1161.

The facts are the, "valid" finding in 2002 had and has a direct impact on Ms. Atkinson's life. In 2002 the Department , without due process, put a negative mark in Ms. Atkinson's file. Three years later the department determined Ms. Atkinson had a pattern of breaking the rules. Based on the two separate incidents the department decided Ms. Atkinson was unatrainable and therefore could not be trusted as a foster parent.

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4 Ms. Atkinson's losses exceed any of the tests  
5 provided by the courts outlined above. The effect and  
6 importance of the, "valid" licensing finding, are  
7 documented and supported over and over by the  
8 department in both their statements and their actions:

- 9
- 10 • Ms. Greer the attorney for the defense in her  
11 Response Brief dated January 1, 2008, page 19  
12 line 7-12 said, "...the 2002 incident with  
13 Tonya figured into the decision to revoke  
14 Atkinson's license in 2005..... "
  - 15 • Ellen Turner, CPS Investigator, reported during  
16 her testimony, "...the number of referrals is  
17 considered a risk factor, again I don't write  
18 the matrix. I am not sure what the thinking is  
19 on it but it is something that we have to  
20 include. VRP 3, 166-170.
  - 21 • Ms. Greer, in her closing statement summed up  
22 states defamation of Ms. Atkinson's good name  
23 very clearly, "She had already been given the  
24 famous one bite of the apple with Tonya. And  
25 she didn't learn and when you have someone who  
26 just doesn't seem to learn then you cannot  
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trust them with vulnerable children in the care of the State of Washington".

- Diane Thompson explaining her response to an employer's request to have Ms. Atkinson cleared to work with children said, "...I saw the 2002 and 2005 incidents as not isolated issues but rather a pattern of violation of rules.... I conclude that Ms. Atkinson does not demonstrate good judgment..." Exhibit II.

The facts are the "valid" licensing finding in 2002 had a direct impact on Ms. Atkinson being deprived of substantial and protected interests.

The second test is that of erroneous deprivation of interests. We have just finished identifying Ms. Atkinson's interests as those protected by law. We have also shown them to be substantial and of a nature not to be thrown away lightly. Now we must prove those interests were taken based on faulty information.

We have already demonstrated that the evidence, more likely than not, contains error, due simply to its disappearance, "error of omission". The state and private agency were unable to produce subpoenaed documents, which they are required by law to maintain

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4 for 7 years. Ms. Atkinson was also unable to produce  
5 documents, as the laws pertaining to her documents  
6 required they be destroyed when a child is no longer  
7 living in the home. In addition witnesses questioned  
8 indicated over and over their difficulty in recalling  
9 events almost 4 years old. It follows that there  
10 was erroneous deprivation of interests due to the  
11 eroded evidence.

12 Under the standards above, it also would not have  
13 been a significant administrative burden to let the  
14 petitioner know then their conclusions of a, "valid"  
15 licensing finding, and the long term effects of the  
16 same. Ms. Atkinson was denied an opportunity to  
17 timely give additional input to the decision. If  
18 there was some degree of formality to this finding,  
19 perhaps the investigators would have at least looked  
20 to determine what the law was pertaining to the issue  
21 and Ms. Atkinson would have been given the opportunity  
22 to contest it. As it was she was not even told. It  
23 seems clear that it would not have been an  
24 administrative burden to simply ask the social worker  
25 if Ms. Atkinson's claims were true.  
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4           The truth of the matter is this; had the  
5 department handled their investigation appropriately  
6 in 2002, the administrative burden would have been  
7 drastically reduced. The effects of their less than  
8 adequate investigation has brought us here today. We  
9 can be fairly sure that the expensive and burden of  
10 asking Ms. Miller in 2002 pales in comparison to where  
11 the department is now in regards to the cost and  
12 burden this case has brought.

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14           Also under the test of government interest, we  
15 would claim that it is as important to protect foster  
16 parents from false allegations as it is to prosecute  
17 those allegations which are true. Currently the State  
18 of Washington is in desperate need of good, caring,  
19 and qualified foster parents. As the trial record  
20 shows, all of the individuals that worked with Ms.  
21 Atkinson found her to be an exceptional foster parent,  
22 one of the best, truly caring, and a great advocate  
23 for the children in her care. VRP. 3,p.76-77, VRP  
24 4,p.80-83, VRP 5, p.26, VRP 5,p. 63-65. In fact not  
25 one person questioned, who had actually worked with  
26 Ms. Atkinson, had anything negative to say about her.  
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28 Is it not an interest of the state to retain good

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4 foster homes and the current process leads to falsely  
5 accused homes being closed, actually an erroneous  
6 deprivation of the State's interest as well as the  
7 foster parent.

8 In the matter of disciplinary action concerning  
9 Herbert Wimberger, MD the State of Washington  
10 Department of Health Office of Professional Standards  
11 stated on page 15, 3.18, "Due process involves  
12 principles of fundamental fairness and justice." The  
13 same authority further outlines how the implementation  
14 of due process can be implement while balancing the  
15 competing interests of the individual and the state:  
16

17 ..due process requires that the prejudice to  
18 the respondent in his ability to defend  
19 against charges be weighed against the  
20 interest of the State in protecting the  
21 public health and well being. The factors  
22 the decision maker should consider in  
23 determining if, and to what extent, the  
24 respondent has shown prejudice in his  
25 ability to defend against the charges  
26 include, but are not limited to, the  
27 following:

24 a. Whether after diligent efforts,  
25 the Respondent is unable to obtain  
26 actual and relevant evidence that once  
27 likely existed but now no longer exists  
28 or is otherwise unavailable;

b. Whether the Respondent's inability  
to obtain actual and relevant evidence  
is through no fault of the Respondent;

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c. Whether the evidence would directly rebut one or more of the elements of the charge; and

d. Whether, as a result and as a matter of law, it would be fundamentally unfair to proceed to hearing on the charges.

3.24 The factors considered in balancing the state's interest in protecting the health and well being of the public include, but are not limited to , the following:

a. Whether the charges reflect on the Respondent's current ability to practice medicine with reasonable skill and safety;

b. Whether the charges reflect on the integrity and standing of the medical profession in the eyes of the public; and

c. Whether dismissal of the charges prior to the hearing would deter future complaints to the Board;

Although in the case sighted above the Doctor was ruled against, the outline of consideration of the case is very similar to the case at hand with Ms. Atkinson and the outcome of the analysis quite different.

In Ms. Atkinson's case it is clear that she was diligent in trying to obtain evidence, that through no fault of her own the department was unable to produce subpoenaed documents and memories had faded. It is

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also clear that if Ms. Atkinson had known of the alleged violation in a timely manner, she could have directed the investigators to documents containing the directives and or to the Social Worker, Linda Miller, who gave the directive; all evidence that would have directly rebutted the charge.

It is further clear that given the inadequate investigation and, the loss of records it is a result and a matter of law fundamentally unfair to ask Ms. Atkinson to defend these charges.

Perhaps the intent of due process would have been met, by the litigation before the ALJ almost 4 years after the incident. and laches not a fair argument if:

1. The Department had been able to produce subpoenaed records.
2. If the private licensing agency had been able to produce subpoenaed records.
3. If Ms. Atkinson had been allowed to maintain records of form foster children after they were removed from my home.
4. If the department had investigated Ms. Atkinson's claim to have had direction from the social worker, This investigation could have been

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as simple as to have asked the Social Worker, at the time Ms. Miller, "Did you give Ms. Atkinson permission to allow Tonya to self-medicate?") and then document the answer and be able to produce the documentation during this or the previous hearing.

But none of these things happened and as result Ms. Atkinson has been unjustly effected in many ways as outlined in her Declaration attached to this brief. Exhibit III.

The last issue is whether mandamus is the appropriate relief. Writs of Mandamus are governed by R.C.W. Chapter 7.16. R.C.W. 7.16.160 sets out grounds for granting such a writ:

It may be issued by any court, except a district or municipal court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person.

The law gives DSHS and Matt Cleary, its agent, the authority and requirement to issue foster care licenses, to investigate licensing issues, and to

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3 investigate allegations of neglect. R.C.W. 74.15.130,  
4 R.C.W. 26.44.120:  
5

6 (4) On reports of alleged child abuse and  
7 neglect, to investigate agencies in  
8 accordance with chapter 26.44 RCW, including  
9 child day-care centers and family day-care  
10 homes, to determine whether the alleged  
11 abuse or neglect has occurred, and whether  
12 child protective services or referral to a  
13 law enforcement agency is appropriate

14 The duty to investigate includes the duty to  
15 perform such investigations competently. See, for  
16 example, negligent investigation suits in Babcock v.  
17 State, 131 Wn. App. 372, 809 P.2d 143(1991). Tyner v.  
18 DSHS, 141 Wn.2d 68; 1 P.3d 1148 (2000), Blackwell v.  
19 DSHS, 131 Wn. App. 372, 127 P.3d 752 (2006). In  
20 Blackwell, the court held that, for negligence claims,  
21 no duty is owed to a foster parent in child abuse  
22 investigations under R.C.W. 26.44.030, as the foster  
23 parent, unlike a parent, is not included in the class  
24 to be protected. Please note that this mandamus claim  
25 is not an action for negligence and for damages. It  
26 is instead a petition for relief from future effect of  
27 the past negligent investigation regarding licensing  
28 issues, and from a failure of due process. Indeed,  
Mandamus is only proper where there is no other

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effective remedy at law. RCW 7.16.170, which provides:

The writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit on the application of the party beneficially interested.

For this reason, the lack of ability to sue for damages for negligence qualifies this situation for mandamus, as other remedies are not available.

Consider also Joshua v. Newell, 871 F.2d 884 (9<sup>th</sup> Cir. 1989), which dismissed an action under 42 U.S.C. §1983 brought by a foster parent whose license was suspended after an investigation of child abuse, alleging failure of due process. The dismissal was because the petitioner failed to pursue administrative reviews, which were available to him. Here, the negligent investigation occurred almost four years before, and there were no appeal rights, and no effective remedy at law. The affected person may not even be advised of a negative mark in their licensing file, VRP 3, p. 210, l. 8, and there are no appeal rights from such a "valid" finding. VRP 3, p. 210.

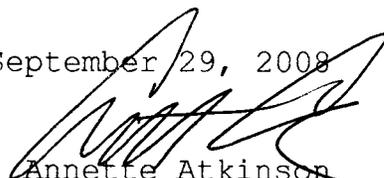
**CONCLUSION**

The Washington State Constitution, Article 1, Section 10, Administration of Justice, says it best, "Justice in all cases shall be administered openly and without unnecessary delay".

We submit that Mandamus and Prohibition is the appropriate remedy to ensure justice is served at this time.

We ask that the court mandate that the 2002 licensing finding, and all references to the same, be removed from Ms. Atkinson's record, and that the State be Prohibited from further disclosure or reliance on such incident in any manner or for any reason.

Respectfully Submitted this September 29, 2008



Annette Atkinson  
Pro SE

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**SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KITSAP**

**ANNETTE ATKINSON,**  
  
Petitioner  
  
vs.  
  
**DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES OF THE STATE OF  
WASHINGTON,**  
  
Respondent.

NO. 06-2-02329-5

**DECLARATION OF  
MATT CLEARY**

1. My name is MATT CLEARY, and I am a Regional Licensor with the Office of Foster Care Licensing. I am over the age of eighteen years.
2. As a regional licensor, I approve private child placing agencies for licensure and for re-licensure, approve for licensure prospective foster parents certified by the private child placing agencies, review complaints received by the Department regarding either the child placing agency itself or one of its foster homes, and work cooperatively with either the child placing agency to investigative licensing issues or with child protective services if the issue is an allegation of abuse or neglect of a child.
3. On May 20, 2002 I was serving as regional licensor for Catholic Community Services. Annette Atkinson at that time was a licensed foster parent with that agency. A referral came in on May 20, 2002 alleging Ms. Atkinson had allowed a suicidal teen girl unsupervised access to her anti-depressant, and the teen had overdosed on the medication. The case was screened out for licensing to investigate as it did not appear child abuse/neglect had occurred. I contacted the foster parent licensor for CCS, Donna Smith regarding the allegation. Ms. Smith investigated the incident and reported back to me that Ms. Atkinson had only been licensed for six months, that the teen was being readied for independent living and Atkinson believed she was following the advice of the child's social worker. Ms. Smith proposed that she go over the medication regulations again with Ms. Atkinson individually and as part of a group training for CCS foster parents. I concurred with this proposal, and closed the case with a valid finding for the licensing issue-failure to keep medications locked as required by regulation. I determined there was no need for me to further investigate the matter.

1 4. The Department does not afford a due process hearing for valid licensing complaints  
 2 that do not result in revocation of the foster care license. The expectation is that once a  
 3 violation of the regulations has been made, the issue addressed with the foster parent by child  
 placing agency, that the foster parent will not violate that regulation again in the future.

4 I certify under penalty of perjury, under the laws of the State Washington, that the  
 5 forgoing declaration is true and correct.

6 DATED at Tacoma, Washington this 12<sup>th</sup> day of September, 2007.

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 9 MATT CLEARY  
 Regional Licensor

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SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KITSAP

Annette Atkinson,	)	
	)	NO. 06-2-02329-5
Petitioner	)	
	)	<b>DECLARATION OF PETITIONER</b>
vs.	)	<b>RE PETITION FOR</b>
	)	<b>WRIT OF MANDAMUS</b>
DEPARTMENT OF SOCIAL &	)	
HEALTH SERVICES of the STATE	)	
OF WASHINGTON	)	
	)	
Respondents	)	

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Annette Atkinson declares and states:

I am the petitioner in this case, petitioning for review of the agency action formally finding that I am guilty of neglect of a foster child in 2005, and for writ of mandamus to correct misuse of a prior allegation that I violated an administrative regulation as to medication for one of my foster children in 2002.

I understand that the basis for decision on the Petition for Review is to be on the record, as it now exists. I respect that and submit this declaration only as to the Mandamus & Prohibition Petition. As to that Petition, I want to be able to testify live about the many ways I am being and will be negatively impacted by

**DECLARATION OF PETITIONER  
RE WRITS OF MANDAMUS  
AND PROHIBITION**

Anthony C. Otto  
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the 2002 incident, and DSHS mishandling of that situation.

I have been told directly that the 2002 incident is still interfering with my ability to be cleared for work with children. Please see the declaration of Dianne Thompson.

As to the allegation that I violated the DSHS medication regulations in 2002, I have already testified as to what occurred in 2002, and I incorporate that testimony from the record on review. I was following directives of the social worker and am still suffering consequences for following instructions.

Right at the time I received the word that I was formally charged with neglect, I was starting my master's program in Psychology, October 1, 2005. So for the past two years I have continued to go forward with my life plan, always wondering and, worrying about the outcome of this case. There are several times through out the course of school that I have come close to quitting because of this case, and currently have stopped due to my inability to get an internship in the field that I wish to work. Knowing that I can not work with families and children is devastating and the idea of having to ask an organization to take a chance on me while this case is not yet settled has been almost impossible.

I have been told directly that because of a negative licensing finding from 2002, and the loss of my foster care license, and the finding of neglect, I cannot have unsupervised contact with children. This complicates my life considerably, as I am executive director of Therapeutic Solutions, a counseling

1 service serving families and children. We have two major  
2 contracts: Family Preservation Services, for which I hire  
3 therapists to work with families in stress, and Parent Child  
4 Visitation, for which I hire qualified persons to supervise  
5 contact between parents and children, where supervised visitation  
6 only is ordered by a court. Since May of 2006 I have had to  
7 employ people to do work that I would have been able to do if I  
8 had been able to pass the background check. If I had been able  
9 to take cases I estimate that I would have been able to carry 10  
10 Family Preservation Services cases every 6 months, the loss of  
11 which has cost me financially in significant amounts.

12 In addition, if I could back up my therapists It would be  
13 much easier to grow a company, it is very stressful having to run  
14 an organization and be unable to fill in as needed, as I feel it  
15 is important to let people with whom and for whom I work what I  
16 have been accused of. I don't know how much this has affected  
17 the company's ability to get work, but I suspect it has had a  
18 considerable impact.

19 Having to explain my situation to people I employ is very  
20 embarrassing, but I don't want them to hear things and not know,  
21 so I must tell them. They also may not want to be associated  
22 with me because of this incident and I believe it is important  
23 for them to be able to make that choice.

24 I have also had to tell the faculty and administration of my  
25 school as well as potential internship placements and other  
26 members of the community with whom I work. It is difficult to  
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explain why I can't be left unsupervised with children.

Probably the most damaging is knowing that the outcome of this case can destroy my life's dream. I made the decision to go back to school in order to learn as much as I could to help children aging out of foster care. The time I spent with these kids changed my life. I want more than anything to empower them to become the best they can be despite their rough beginning. Knowing that I may never be able to do that has affected me in more ways than I can ever write down. My plan had been to develop an Independent Living Program, that would include varying levels of independence for children aging out of foster care. I have even bought a house with a duplex on the same property for this program. Not being able to be a foster parent, or run a group home, and or run an independent living program has pretty much destroyed my life plan. Not only does it eliminate these plans but pretty much stops me from working anywhere in the field of helping vulnerable children and families which is what I am passionate about. When you take away someone's passion and dreams it does a lot of damage.

In addition to the things mentioned above this case has affected my family and volunteer life. During my years as a foster parent I was too busy taking care of the youth to volunteer with various organizations but in the past I had been a chaperone for various functions and had volunteered in numerous programs in the schools. At this point I would be unable to do these things. Last year I had wanted to be a chaperone for my niece and nephews

**DECLARATION OF PETITIONER  
RE WRITS OF MANDAMUS  
AND PROHIBITION**

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school field trips, I spoke to my sister who is on the PTA and of course all field trip chaperones have to pass a background check, and I can't. It grieves me that I will never be able to do those kind of things, or be a coach or a mentor.

I declare that the foregoing is true under penalties of perjury under the laws of the State of Washington.

Dated this 13<sup>th</sup> day of November, 2007 at Port Orchard, Washington.

  
Annette Atkinson

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**SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KITSAP**

ANNETTE ATKINSON,  
Petitioner

NO. 06-2-02329-5

vs.

DECLARATION OF  
DIANNE THOMPSON

DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES OF THE STATE OF  
WASHINGTON,  
Respondent.

1. My name is DIANNE THOMPSON, and I am a Social and Health Services Program Consultant III with the Department of Social and Health services. I am over the age of eighteen years.

2. I am currently acting as Contracts Monitor for Region 5, but my permanent position is as Contacts Manager.

3. As a Contracts Manager, I reviewed and issued new contracts and renewed contracts for providers of services to the Department of Social and Health Services. As part of the contracting process, I review background clearance forms for all staff employed by or volunteering with the contracting providers. If a background clearance comes back with "hit" that is, negative information, I review that information to determine whether or not that person has the character and suitability to have direct, unsupervised access to our clients.

4. In the spring of 2006, I reviewed a background clearance from submitted by Annette Atkinson seeking to work at Therapeutic Solutions in a capacity given her direct access to children. This agency has contracts to provide Family Preservation Services, Professional Services, and Parent-Child Visitation Services. Her background clearance came back with "a hit"-revocation of her foster care license and a CPS finding of negligent treatment of a child.

5. Following procedure I reviewed the form, and contacted both Macie Marr, foster care licensor and Social Worker Carla Meier for additional information concerning the revocation

1 and CPS finding, and contacted Ms. Atkinson, who provided me with some additional  
2 information. I then consulted with Ken Panitz, Contracts Monitor.

3 6. As Contracts Manager, I was concerned that Ms. Atkinson had had her foster care  
4 license revoked. I was concerned that she had a CPS finding of negligent treatment entered  
5 against her. I was concerned that the incident in 2005 was the second time Ms. Atkinson had  
6 allowed foster children access to medication in violation of licensing regulations. The  
7 revocation itself, and the CPS finding in itself are sufficiently serious to disqualify Ms.  
8 Atkinson from direct unsupervised contact with children in one of the Department's  
9 contracting agencies. I saw the 2002 and 2005 incidents as not isolated issues but rather a  
10 pattern of violation of rules designed to protect children in care. I concluded Ms. Atkinson  
11 does not demonstrate the good judgment required by DSHS contracting agencies.

12 7. I disqualified Ms. Atkinson from working directly with the children at Therapeutic  
13 Solutions. Ms. Atkinson can ask for that decision to be revisited at any time she feels she has  
14 new information/rehabilitation information for the Department to consider.

15 I certify under penalty of perjury, under the laws of the State Washington, that the  
16 forgoing declaration is true and correct.

17 DATED at Tacoma, Washington this 12<sup>th</sup> day of September, 2007.

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DIANNE THOMPSON  
Contracts Monitor

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

Annette Atkinson )  
 ) NO. 37787-0-II  
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 )  
 ) Petitioner )  
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 )  
 ) v. ) **DECLARATION OF SERVICE**  
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 ) DEPARTMENT OF SOCIAL &  
 ) HELATH SERVICES of the  
 ) STATE OF WASHINGTON )  
 )  
 ) Respondents )

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STATE OF WASHINGTON  
BY  
DEPUTY

I, Annette Atkinson Pro Se, declare under penalty of perjury under the laws of the State of Washington, that on this day I deposited in the mail of the United States, postage prepaid, an envelope containing a true copy of BRIEF OF APPEALLANT in the above named case to:

Ms. Lucretia Greer  
Assistant Attorney General  
1019 Pacific Ave., Third Floor  
P.O. Box 2317  
Tacoma, WA 98401

Signed on the 6 of October 2008, at Bremerton, Kitsap County,  
Washington.



Annette Atkinson  
Pro Se  
PO Box 5402  
Bremerton, WA 98312  
Phone (360) 479-1403

