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## **I. Counter Statement of the Issues**

Refer back to Petitioner's, "Brief of Appellant", Sections titled, Assignment of Error and Issues Pertaining to the Assignment of Error.

## **II. Counter Statement of the Case**

### **A. Proceedings**

#### **1. Administrative Proceedings**

The State appears to be accurate in their description of the proceedings except for the statement on page two, line 15, "resulting in the teen overdosing on her lithium". Crissa took an extra dose of lithium she did not show any signs of an overdose.

#### **2. Superior Court Proceedings**

Appears accurate

### **B. Error in Facts**

#### **1. The 2002 incident**

On page 6, line 3 the state again mentions Tonya's Health Safety Crisis plan written after Tonya was removed from my house. Refer to argument laid out in the Brief of Appellant, page 28, lines 10-27.

On page 6, lines 11-15, the state makes statements regarding Linda Miller's Testimony. In response to these claims I again refer back to the Brief of the Appellant page 30, line 3 through page 32, line 6.

On page 6, line 16-18, the state says that Atkinson decided to allow Tonya to self medicate, despite the foster care regulation requiring medication to be locked up. The state again ignores the regulation that a child may administer their own medication if

approved in writing by the Social Worker and that is the regulation that is at issue here.

On page 7, line 2-5, the states argues that there is no proof that medication management was discussed or approved. For argument please refer to Brief of Appellant page 32, line 14 through page 34, line 23.

On page 7, line 12-16, the state claims that Donna Smith reviewed WAC 388-148-0350 with Ms. Atkinson. However Ms. Smith, testified she was unable to recall any specifics of the case (VRP 5 p. 21& 23). It is further clear she was unaware of the entire WAC as she miss states the authority given her as a licenser as evidenced in her letter Exhibit 13.

On page 7, lines 17 the state claims that the ALJ found, there is no credible proof Atkinson told her licenser in 2002 that she had written permission from Ms. Miller. When in fact the ALJ made no finding as to whether or not Ms. Atkinson verbalized a claim of innocence. However again the letter written by Donna Smith, Exhibit 13, clearly shows that Ms. Atkinson at a minimum said she had verbal permission and after making that claim no investigator asked if I also had it in writing.

On page 7, line 20 the state indicates that it is the private agency that is responsible for investigating license violations. While it is true the Department can hand over the responsibility for license violations to a private agency, it remains the Departments responsibility for the accuracy of that investigation. Furthermore in this case the allegation brought against Ms. Atkinson started as an abuse allegation requiring the Department to investigate. Regardless of who was responsible for the investigation what is very clear is there was no investigation . For argument please refer to Brief of the Appellant page 47, line 18 through page 48, line 20.

On page 8, line 15-17, the state claims that they did not owe Ms. Atkinson a timely opportunity for a due process hearing. While the state may be accurate in their statement that Ms. Atkinson was not due an

automatic adjudicative hearing, due process itself is every citizen's right. For argument please refer to Appellant Brief page 36 through page 47, line 14.

**2. The 2005 Incident**

Irrelevant to this case.

**III. ARGUMENT**

**A. Review of Administrative Proceedings.**

**1. Standard of Review**

Appears accurate

**2. Burden of Proof**

Appears accurate

**3. Authority to reverse**

It appears that the State outlines the authority correctly, the

conclusion of this case is faulty. Again the state claims that Ms. Atkinson's only claim of failed due process rights is the lack of a timely adjudicative hearing. This is simply

inaccurate as outlined above.

**4. Substantial Evidence**

Please refer to Appellant Brief page 26, line 21 through page 28, line 9.

**B.**

Please refer to Brief of Appellant, page 36 through page 47, line 14.

**C. Atkinson was not afforded due process to contest the revocation of her license.**

The State is accurate in their statement that, "The opportunity to be heard must also be granted at a meaningful time and in a meaningful manner". However what meets this criteria is where they fail the test. The state would have us believe that asking a Social Worker and a licensor to remember details of a specific case some three years later without their records to review is meaningful and timely. IN testimony neither Ms. Miller the Social Worker or Donna Smith, the licensor were able to remember details and spoke only to what they would normally have done and not what they did.(Ms. Smith's Testimony is discussed in the Brief of Appellant page 11, line 12 through page 12, line 14. and Ms. Miller's testimony is outlined in the same document page 30, line 4- through page 32, line 13.

ON page 26, line 14 the state indicates that only the social worker was unable to locate her file, when in fact all files; the social workers, the departments and the licensing file of Ms. Atkinson had missing

information the significance of which was recognized by Judge Ross in her Initial ruling on page 33, #26.

**D. The Trial Court made an error in denying the petition for Writ of Mandamus.**

Please refer to Brief of Appellant pages 48, line 24 through page 49, line 27.

**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 December 14, 2008

A handwritten signature in black ink, appearing to read 'Annette Atkinson', with a long horizontal flourish extending to the right.

Annette Atkinson  
Pro SE

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

Annette Atkinson

Petitioner

v.

No. 37787-0-II

DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES OF THE STATE OF  
WASHINGTON

Respondent.

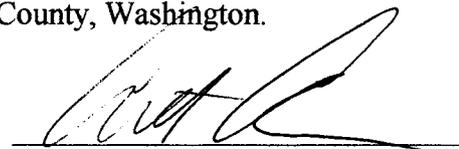
**DECLARATION OF  
SERVICE**

I, Annette Atkinson, declare under penalty of perjury under the laws of the State of Washington, that on this day I sent by facsimile and deposited in the mail of the United States, postage prepaid, an envelope containing a true copy of Reply Brief of Appellant regarding the above referenced case to:

Ms. Lucretia Greer  
Assistant Attorney General  
1019 Pacific Avenue, Third Floor  
PO Box 2317  
Tacoma, WA 98401  
Fax (253) 593-2449

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DIVISION II  
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STATE OF WASHINGTON  
BY  DEPUTY

Signed on December 15, 2008 at Bremerton, Kitsap County, Washington.



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