

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. N-01/12-39
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families substantiating a report that he sexually abused A., his granddaughter.¹ The issue is whether the Department's decision is supported by a preponderance of evidence. Legal issues in the case include evidentiary and procedural rulings that have been made by the hearing officer.

PROCEDURAL HISTORY

On or about July 18, 2011 the Department received a report that the petitioner's granddaughter, A., who had just turned three (d.o.b. 7/3/08), had told her foster mother that her grandfather had sexually abused her. On or about September 23, 2011, following an investigation, the Department determined that the report should be substantiated as sexual abuse. The petitioner timely appealed this decision, and a review meeting was held on December 29, 2011.

¹ At all times during his appeals the petitioner has proceeded *pro se*.

On January 4, 2012 the Department's reviewer upheld the decision to substantiate the report as sexual abuse of A. by the petitioner. The petitioner appealed this decision to the Human Services Board on January 18, 2012.

Beginning on February 3, 2012, telephone status conferences were held almost on a monthly basis. Initially, continuances were granted for the Department to provide the petitioner with copies of its case records. On April 9, 2012 the Department disclosed that it had a video recording of an interview with A. conducted pursuant to its investigation. On May 2, 2012 the Department submitted copies of the video to the petitioner and the Board. On that date, the Department also filed a *Motion in Limine* seeking the admission of hearsay evidence (including the video) and for accommodations in order to take A.'s testimony as part of this hearing.

In a memorandum dated June 20, 2012 the hearing officer ruled that the video recording was inadmissible hearsay (see *infra*). The hearing officer also directed the Department to file a "detailed offer of proof" as to any other evidence it wished to submit by July 6, 2012. On July 9, 2012 the hearing officer issued the following rulings:

1. The Department shall have until July 27, 2012 to submit the following proffers of evidence:

a. Medical findings and opinion that the witness is likely to suffer trauma unless accommodations can be made for the taking of her testimony. This proffer must include a detailed description of the accommodations being sought and specific dates on which the witness would be available to testify.

b. A summary of the witness's expected testimony, including the sources of the Department's information regarding its proffer.

2. No further continuances will be granted to the Department after July 27, 2012 absent a showing of exceptional circumstances beyond the Department's control.

3. The matter will be scheduled for a final telephone status conference to discuss the hearing officer's rulings regarding the above and, if necessary, to set the matter for hearing.

On July 26, 2012 the Department submitted a "proffer of evidence" regarding both its request that accommodations be granted to have A. testify as a witness at the hearing and the hearsay testimony to be offered by its other witnesses. At a telephone status conference held on August 3, 2012, the hearing officer directed the Department to furnish the petitioner and the Board with copies of A.'s treatment records if it wished to call A. and her therapist as witnesses at the hearing. At a status conference held on September 7, 2012 the hearing officer extended that deadline

another two weeks. The Board received its copies of A.'s treatment notes on September 20, 2012.

Another telephone status conference was held on October 5, 2012. At that time the hearing officer made several oral rulings, including a ruling that the notes of A.'s therapist regarding the allegations of abuse against the petitioner were inadmissible hearsay, but partially granting the Department's motion for accommodations to take the *direct* testimony of A. at an initial hearing to be held solely for that purpose. The hearing officer advised the parties that following A.'s direct testimony he would rule on the admissibility of all the other evidence proffered by the Department and, if indicated, set the matter for further hearing.

At a telephone status conference held on October 12, 2012 the parties agreed that a hearing to take A.'s direct testimony would be held on October 26, 2012. The hearing officer ruled that the direct examination of A. could be done by the Department's attorney at the Department's Newport office with the petitioner and the hearing officer observing the testimony in another room behind one-way glass. The

hearing officer also ruled that A.'s foster mother could be present in the room.²

The hearing, under the circumstances described above, was held on October 26, 2012. The following discussion is based on the testimony taken at that hearing and on the written and video documentary evidence proffered to date by the Department.³

DISCUSSION OF PROFFERED EVIDENCE

I. Background.

The written records submitted by the Department indicate that in 2011, A. was in foster care in Department custody due to her biological father (the petitioner's son) being incarcerated and her mother and her mother's boyfriend having substance abuse problems. The records indicate that the petitioner (A.'s paternal grandfather) had visitation with A. supervised by the Department, and that he was seeking custody of A. There is also a record that the petitioner had filed allegations of sexual abuse of A. by her mother's boyfriend, who had been previously substantiated by the Department for sexual abuse of another child. Department notes dated June

² The petitioner objected to all of these rulings.

³ At all times the petitioner has opposed the Department's requests and the hearing officer's granting of continuances and extensions.

3, 2012 indicate that the petitioner was "getting more and more frustrated" that A. had been placed in foster care and that the foster mother had reported that the petitioner had attempted to engage in an "inappropriate conversation" with her within earshot of A.

None of the above information is in dispute.

II. The initial report of abuse.

The incident in question was first reported to the Department on July 18, 2011 by A.'s foster mother. The Department's records include the following "intake details":

Caller is Foster Parent of children.

Both children are in DCF custody.

[A] had a visit with grandpa on Thursday. Caller said after her visits with grandpa she has behaviors of putting her hands down her pants. Caller said after this visit [A] was doing it again; caller asked [A] on Friday if her panties were bothering her. [A] said no. Caller talked about how it is ok to do that but to not do it in public. [A] said "but my grandpa touches my privates". Caller said he does? [A] said "he put his fingers in my privates" [A] said "it hurt and it made me bleed and I cried" Caller said she was very sorry that this happened.

Caller asked [A] if it was the grandpa that lives far away or the grandpa that we see. [A] said "we fed ducks with him". Caller said they fed ducks down on the lake on Thursday during their visit so caller knew it was Grandpa Larry. Caller said she kind of let the conversation go at this point because caller didn't want to put anything in her head and just let [A] talk. Caller told [A] that she was ok. [A] said it's not my fault. Caller said of course it's not your fault. [A]

then said she was safe. Caller said yes you are safe and caller said she would keep her safe while she was living there. Caller then suggested they go do a puzzle and [A] looked at caller and said "my grandpa has privates". Caller said he does? [A] said "yea, I saw them". Caller said you did? [A] said yea I don't like them; [A] then was fanning her hand in front of her nose and said "they stink". Caller didn't know what to say at this point and said I'm sorry [A], your safe now. [A] then put on a smile and started doing the puzzle again.

Caller said since Friday [A] keeps saying to caller I'm safe, I live here. I'm not going to live there. Caller said [A] has told this story to caller's daughter and caller's husband.

Caller said she has previously had the good touch bad touch talk with [A] before. Told [A] that doctors are allowed to touch children and when bathing parents are allowed to touch privates when cleaning but not to touch inside, only the outside while cleaning.

Caller spoke with [A's] social worker [name] this morning and [name] told caller to make a report to CIU and [name] would take care of it on her end.

CIU asked if [A] said if Grandpa touched her on that visit. Caller said no, but he wouldn't have had a chance because the visits were supervised. CIU asked when the last time would have been that [A] and Grandpa were alone together. Caller said before they came into custody which was April. CIU asked who supervises the visits, caller said NDO.

CIU asked when grandpa and [A's] next visit is, caller said there isn't one scheduled yet.

The Department's *Proffer of Evidence* submitted on July 26, 2012 (see *supra*) does not contain any additional allegation or information regarding the foster mother's potential testimony in the matter. The Department's records

indicate that prior to the report made in July 2011, A. looked forward to her visits with the petitioner; and the Department does not allege that A. at any time before the investigation expressed or showed any fear of him or anxiety about visiting him.

III. A.'s interview.

The Department's records indicate that A was interviewed on July 19, 2011, the day after the foster mother's report. As noted above, the Department's records include a video recording of that interview. The interview was jointly conducted by "AB", a female state police detective, and "GM", the Department's (male) investigator. A. was playing with modeling clay throughout the interview and appeared cheerful and at ease. However, for the first 25 minutes of the interview, A. did not provide any information whatsoever about the reported incident, despite persistent, repetitive and leading questions by the interviewers. Finally, beginning at 25 minutes into the interview, after reference being made as to what she had told her foster mother, A. provided certain information. The questioning by that point had become even more leading and repetitive. The Department's transcription of these exchanges (with identifying times during the interview) is as follows:

(25m 19 sec) AB: "So she said that you guys talked about private parts?"

[A]: "No."

AB: "Oh, ok."

[A]: "Somebody touched my privates again."

AB: "Somebody touched your privates again?"

[A]: "Ya".

AB: "Who touched your privates?"

[A]: "Grandpa."

AB: "Grandpa?"

[A]: "They get in trouble."

(26m 00 sec) GM: "Did they hurt afterwards?"

[A]: "Ya, they make me bleed. I cry again."

AB: "Again?"

[A]: "Ya."

AB: "So it happened before, too?"

[A]: "Ya."

(26m 44 sec) AM: "What are your privates?"

[A]: "They are stinky, my privates."

(36m 09 sec) AB: "Where are our when grandpa touches your privates?"

[A]: "He get in trouble."

AB: "He got in trouble?"

[A]: "Again he is in trouble."

AB: "Who's he in trouble with?"

[A]: "Grandpa is."

AB: "Papa's in trouble?" How is he in trouble, what happened?"

[A]: "Not that one. He/I (I cannot discern which ~ GM) touched my privates again."

AB: "He touches your privates again? Where are your privates? Can you show us where your privates are?"

[A]: "Right there."

Note: [A] pointed to her groin and then pointed to the groin of a simple drawing in the shape of a person.

(40m 00 sec) [A] states hand and points out the hand on the drawing.

(40m 26 sec) [A]: "They smack me."

GM: "Who, who did that?"

AB: "Like this. Grandpa's a boy. He makes me, me don't like me. Somebody kinda mean. They (?) me. They hurt me. I'm lonely. That's why I cry. I cry again."

GM: "You cry?"

[A]: "Ya."

GM: "What made you cry?"

[A]: "I happy!"

GM: "You're happy now, but what made you cry?"

[A]: "Grandpa."

GM: "Grandpa?"

[A]: "Grandpa's in trouble. Maybe"

GM: "Maybe?"

[A]: "We need to check on him."

GM: "Why would he be in trouble?"

[A]: "Grandpa not in trouble. No."

AB: "Why do we have to check on grandpa?"

[A]: "Only me. We check on him later."

AB: "You'll check on him later4?"

[A]: "Ya."

AB: "You come?"

[A]: "Cause him bad."

AB: "Cause he is bad?"

[A]: "Ya."

AB: "You said he hurt you.....? How did he hurt you.....?
Where did he hurt you?"

[A]: "Somebody don't touch my privates. Grandpa. This I
tell grandpa. (?)"

. . . .

AB: "You told grandpa not to touch your privates?"

[A]: "No."

GM: "Have you ever seen grandpa's privates?"

[A]: "Ya, he got only one privates (?)"

GM: "He only got one.....? And they won't hurt again?"

[A]: "And mine and grandpa's and mine!"

GM: "Grandpa's?"

[A]: "And mine!"

GM: "And yours?"

[A]: "Ya!"

(42m 25 sec) AB: "So grandpa touched your privates? What happened with his privates?"

[A]: "I didn't bleed his."

AB: "You didn't bleed his?"

[A]: "No, I'm not in trouble?"

AB: "No you're not in trouble. You're right"

. . . .

AB: "Did somebody tell you were in trouble?"

[A]: "Yes."

AB: "Who?"

[A]: "Grandpa."

AB: "Grandpa said what?"

[A]: "Grandpa told me I is."

(47m 00 sec) AB: "Who can touch your privates? Can anyone touch your privates?"

[A]: "No."

. . . .

GM: "Has anyone touched your privates who wasn't suppose to?"

[A]: "Somebody did."

GM: "Who?"

[A]: "Grandpa."

Foster mother, [name], is in the room at this point.

(57m 50 sec) GM: "Can you tell us about your dreams?
Your nighmares?"

[A]: "Ya."

GM: "What do your dream?"

[A]: "Grandpa in my last dream."

GM: "What happened?"

[A]: "(?) my grandpa. I on the floor, I saw somebody
gonna kill him."

Based on his viewing of the actual video, the hearing officer deemed A.'s affect during these exchanges to be distracted and nonchalant, and her answers to be more rote than spontaneous. It appeared to the hearing officer that A. was more recalling recent conversations with her foster mother than remembering and describing any actual traumatic event that had happened to her. In its *Proffer of Evidence* the Department does not allege that the interviewers would testify to anything in addition to the above recorded exchanges.

IV. Medical evidence (physical).

The Department's records show that on July 26, 2011, A. was examined by a physician as part of a "childsafes evaluation". A.'s foster mother was present throughout the examination, and provided the physician with information regarding A.'s prior statements regarding the petitioner. There is no indication in the record that A. provided any information herself to the examiner. The physical examination was normal except for the following:

On physical examination today, there is evidence of some tissue loss in the fossa navicularis on the right side. While this is not diagnostic of sexual abuse, it is concerning for prior trauma to this area. In light of [A.'s] disclosure, this is very concerning for previous sexual abuse.

Again, the Department does not allege that the physician would testify to anything other than what is contained in her report.

V. Medical evidence (psychological).

A. is presently being treated by a licensed clinical mental health counselor (LCMHC). These visits began in March 2012, several months after these proceedings were underway. The therapist provided the following report dated July 23, 2012 stating his opinion that A. would be traumatized by contact with the petitioner at a hearing:

At the request of the treatment team, I have been asked to comment on [A's] readiness and clinical appropriateness of her testifying in person facing, what she knows, is her abuser. [A] was referred to counseling several months ago for anxiety issues. Her care provider [name] and the DCF treatment team have consistently brought her in for weekly treatment sessions. I have found that she meets the criteria for both Anxiety disorder with Panic and Post Traumatic Stress Disorder. I have concluded, through my observations and work with [A], that the root of this anxiety is based in her memories of sexual abuse and the team's attempts to reunify her with her biological father.

[A] is an amazing young girl, a toddler of only 4, whose world has shown her terrible lessons about love and safety that no one would want for any child. She is incredibly smart and communicative, able to express her thoughts and wishes very clearly; however she is still in most ways a 4 year old. She has difficulty understanding and processing what has happened to her. This difficulty in processing her history of trauma often can lead to a level of frustration and anxiety that harms her. I see, and hear reports of, [A] exhibiting harmful coping skills when faced with perceived triggers to her abuse. These include issues around elimination, vomiting, refusing to eat, and sleep pattern disturbances. I conceptualize these systems as clearly linked to [A] being forced to revisit, emotional and physically, her past life with her paternal grandfather's (her abuser) family.

Given the level and kind of trauma reactions that contact or even the anticipation of contact elicits, I feel [A] being forced to face her abuser would cause great psychological harm and possibly interfere with her health, healing and treatment. I strongly recommend that she be given accommodations to mitigate this likely harm, and not be forced to testify in a court-like situation. I will be continuing to treat [A] weekly and look forward to any questions on her case.

There are two issues regarding the opinion of A.'s therapist. First is the evidentiary issue of whether A. would be traumatized by confronting the petitioner at a hearing. As noted above, the hearing officer made a provisional ruling crediting the therapist's opinion (*supra*) to the extent that the petitioner (and the hearing officer) would not be physically present in the room during A.'s *direct* examination by the Department. However, the hearing officer deferred a ruling as to (1) whether the petitioner would be allowed to cross examine the therapist on the issue of "trauma", and (2), depending on the outcome of that questioning, whether the "accommodations" that were made for A.'s direct examination by the Department would also be made for any cross examination of A. by the petitioner.⁴

The second issue concerning the therapist's testimony (discussed below) is whether it is admissible as evidence regarding the underlying credibility of A.'s allegations. Regarding both the above issues, the Department has proffered

⁴A ruling in the Department's favor regarding the petitioner's right to cross examine A. (though ultimately unnecessary, see *infra*) would have been particularly problematic. The petitioner is *pro se*. He does not have a lawyer who could cross examination A. without him being present (an accommodation used by the Board in past cases), and he would have to prepare questions in advance to be asked by the hearing officer in his stead.

the therapist's treatment notes of A. Those notes include the following:

One of the first interactions I had with (A.), she loudly announced that her Gfather (sic) had "touched her privates and made them bleed." This was stated in second session as well.

High communication skills for age=/=comprehension.

However, despite monthly visits, the therapist's office notes through September 2012 indicate virtually no progress in getting A. to talk about the alleged abuse by the petitioner. Other than the initial note cited above, there is no indication in any of the therapist's notes that A. has ever discussed with him any alleged abuse by the petitioner. It is clear from the office notes that all of the therapist's information regarding this alleged abuse stems solely from A.'s brief "announcements" cited above and information initially provided to him by A.'s foster mother. In its proffer of evidence regarding the therapist's testimony, the Department does not allege otherwise.

EVIDENTIARY RULINGS

All the above hearsay evidence proffered by the Department is deemed inadmissible under Rule 804a(a)(4) of the Vermont Rules of Evidence (V.R.E.), in that it does not provide a "substantial indicia of trustworthiness".

DISCUSSION

Rule 804a is an exception to the hearsay rule in which hearsay statements by a witness under twelve may be admitted under certain circumstances. This rule requires: (1) that the statements were made by the alleged child victim of sexual abuse, (2) that they were not taken "in preparation for a legal proceeding", (3) that the child is "available to testify", and (4) that the "time, content, and circumstances of the statements provide substantial indicia of trustworthiness".

In this case there is no dispute that the provisions of (1) and (2)⁵ of the above rule are met. 33 V.S.A. § 4916b creates an exception to the third requirement under V.R.E. 804a(a) that in substantiation hearings before the Human Services Board a child under 12 need not be made available to testify if "the hearing officer determines, based on a preponderance of evidence, that requiring the child to testify will present a substantial risk of trauma to the child." Under Rule 807 V.R.E, a finding of "trauma" is also

⁵ It is now well-established law in Vermont that statements obtained during a Department investigation regarding possible sexual abuse of a child cannot be considered to have been made "in preparation for a legal proceeding" under part 2 of § 804a (*supra*). See *State v. Tester*, 179 Vt. 627 (2006).

required for any "accommodations" to be made to avoid a child witness directly confronting an alleged perpetrator. As discussed above, the hearing officer ruled that A. could provide *direct* testimony at the hearing out of sight of the hearing officer and the petitioner, but the hearing officer deferred ruling on whether accommodations based on "trauma" could be granted for her *cross* examination by the petitioner.

However, regardless of any rulings the hearing officer might have made as to the appropriateness of accommodations for A.'s cross examination (see *infra*), there remains the crucial evidentiary question in this case as to whether "the time, content and circumstances" of A.'s alleged hearsay statements to the Department's witnesses provide "substantial indicia of trustworthiness" under Rule 804a(a)(4). As noted above, the hearing officer has ruled that none of the hearsay evidence proffered by the Department meets that test.

The Vermont Supreme Court has held that a trial court has "great discretion in admitting or excluding evidence under this rule". *State v. Tester*, Id. (citing *State v. Fisher*, 167 Vt. 36, 39 [1997]). Some factors courts have noted are whether the child's statements were obtained after leading questions, whether they were sufficiently clear, consistent, and detailed, and whether the child's demeanor

was consistent with those statements. In this case, it must be concluded that none of these factors weigh in favor of admitting the evidence in question.

As noted above, the allegations were initially reported to the Department on July 18, 2012 by A.'s foster mother. A. had just turned three. The Department proffers that the foster mother would testify from memory as to what A. told her that day, which was essentially that her grandfather had "touched her privates" and that this had "hurt" her and made her "bleed" (see *supra*).

There is no record of A.'s alleged statements to her foster mother, no other witnesses who were present, and no claim or indication that the foster mother attempted to solicit from A. any further details or context of the alleged incident. The Department's subsequent investigation revealed that A. had not been alone with the petitioner for several months prior to her alleged statements to her the foster mother, and that A. had never previously expressed or exhibited any fear of him. The investigation also revealed prior complaints by the foster mother about comments the petitioner had made to her during his visitation with A., allegedly within A.'s earshot.

In light of the above, while certainly sufficient and concerning enough to have triggered an investigation by the Department, the hearsay statements of the foster mother, in and of themselves, must be considered suspect in terms of content, time and circumstances. It must be emphasized that at this point no finding can or need be made as to the foster mother's credibility. The problem for the Department is that the *content* of the hearsay statements the foster mother reported A. to have made to her on July 18, 2011 has been rendered less and less "trustworthy" over time.

As noted above, the record indicates that A has on several subsequent occasions made virtually *the exact same statements* she allegedly made to her foster mother on July 18, 2011. By all reports, as well as the hearing officer's direct observation (see *infra*), A. is an articulate little girl who always has appeared fully capable of discussing these allegations. However, A. has never provided any further detail or context whatsoever, no matter how closely and repeatedly she has been questioned--either by the Department's investigator, a state police detective, the physician who examined her, her therapist, or (as will be discussed below) by the Department's attorney during A.'s direct testimony at the hearing in this matter.

Thus, to date, the Department has not uncovered or proffered any more evidence implicating the petitioner than what was initially reported on July 18, 2011 by A.'s foster mother. As noted above, a physical examination of A. on July 19, 2011 showed "some tissue loss" not necessarily inconsistent with past sexual abuse. However, there is no indication in the record that the Department or anyone else acting in her behalf has ever sought to question A. or conduct any further investigation of the possibility (alleged by the petitioner before these allegations came to light) that A. may have been sexually abused by somebody else. Although the findings of A.'s physical examination itself would be admissible, all the other hearsay evidence proffered by the Department allegedly implicating the petitioner is, especially in retrospect, unsupported and suspect. Thus, it cannot be concluded that any of this hearsay evidence meets the standard of "trustworthiness" contemplated by Rule 804a(a)(4) VRE.

At no time has the Department indicated or represented that it intended to call the petitioner as one of its own witnesses. This leaves the Department with A.'s direct testimony at the hearing, which is discussed below.

FINDINGS OF FACT REGARDING A.'s TESTIMONY

1. As noted above, A. gave direct testimony in this matter at a hearing held in a children interview room at the Department's offices in Newport, Vermont on October 26, 2012. A. is now four years old. Her foster mother accompanied her to the hearing and sat behind her. The Department's attorney sat with A. at a table and asked her questions. The petitioner and the hearing officer observed and listened to the testimony in an adjoining room with one-way glass, and were unobserved by A. The hearing officer recorded the testimony, which came over a speaker in the observation room. The hearing officer did not impose any limits on the scope and form of the Department's questioning of A.

2. During her testimony A. seemed relaxed and cooperative, and appeared capable of understanding the questions asked of her. Her verbal skills appeared appropriate, if not somewhat advanced, for her age.

3. At first, A denied that she had a "Grandpa Larry". However, when prompted by her foster mother, A. at first said she didn't remember him. It appeared from her answers that she thought he had died. After further prompting and leading questions by the Department's attorney A. finally stated: "My mean grandpa touched me and made me bleed". The Department's

attorney was unable to extract any other details or information from A. before she became distracted by a puzzle, and the examination was terminated shortly thereafter.

4. Based on A's nonchalant demeanor during her testimony, it is found more likely that A was merely recalling and rotely reciting past statements she had previously made to others as opposed to describing a traumatic incident she actually remembered.

5. Following the hearing, the hearing officer informed the parties that he had found A.'s testimony, even coupled with the other potentially admissible evidence (i.e., the findings of the physical examination performed on July 19, 2011, see *supra*), to be insufficient to establish a *prima facie* showing that the petitioner had sexually abused A.

6. As a result of this finding, and in light of his prior rulings as to the inadmissibility of any of A.'s hearsay statements, the hearing officer ruled that any further hearing (i.e., to allow the petitioner to cross examine A. and to take testimony from the petitioner and any witnesses the petitioner would call) was unnecessary, and

that he would recommend that the Department's decision be reversed.⁶

ORDER

The Department's decision substantiating the report in question as one of sexual abuse of A. by the petitioner is reversed.

REASONS

The statutory sections relied upon by the Department in this matter include the following:

(2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An "abused or neglected child" also means a child who is sexually abused or at substantial risk of sexual abuse by any person.

(8) "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. . .

33 V.S.A. § 4912

In this case there is no dispute that the alleged incident, *were it found to have occurred*, would constitute

⁶This ruling rendered unnecessary any further findings by the hearing officer as to whether A would suffer "trauma" if she were to directly confront the petitioner in a hearing as part of any cross examination (see footnote 3, *supra*).

sexual abuse under the above definition. However, in a *de novo* hearing it is the Board's (more particularly its hearing officer's) province to determine the admissibility and weigh the credibility of the evidence. *In re R.H.*, 2010 VT 95.

Based on the above findings of fact and evidentiary rulings it must be concluded that the Department has not made a *prima facie* evidentiary showing in support of its decision to substantiate the report in question as one of child sexual abuse by the petitioner.⁷ Therefore, its decision must be reversed.

#

⁷ If all or some of the hearsay evidence proffered by the Department in this matter were ruled to be admissible, it would remain for the hearing officer to determine whether such evidence is "worthy of belief". *In re C.M.*, 168 Vt. 389, 394 (1998); *State v. Robar*, 157 Vt. 387, 392 (1991).