

**BEFORE THE REVIEW COMMITTEE
OF THE AMERICAN MIDWIFERY CERTIFICATION BOARD**

In the Disciplinary Matter of:

Tracy A. McBrearty, CNM

Respondent

DECISION

On May 7, 2008, the American Midwifery Certification Board (AMCB) was notified of the revocation of Respondent's license to practice nurse midwifery as a nurse-practitioner in the Commonwealth of Kentucky, effective April 1, 2008. The fact of revocation of the Respondent's license represented a rebuttable presumption of violation by Respondent of AMCB's Discipline Policy.

In accordance with AMCB procedures, the matter was reviewed by an AMCB Board Member, who determined that the matters alleged in the notice of possible violation, if true, could constitute grounds for disciplinary action.

Accordingly, by letter dated July 7, 2008, AMCB notified respondent that it had initiated a disciplinary proceeding to determine whether good cause existed for imposing discipline under the following provisions of the Discipline Policy:

- A.7. Limitation or sanction by a federal, state or private licensing board, administrative agency, association or health care organization relating to public health or safety, or midwifery practice and/or;
- A.9 Engaging in unprofessional conduct, including but not limited to (i) any practice that creates unnecessary danger to a patient's life, health or safety; and (ii) any practice that is contrary to the ethical conduct appropriate to the profession that results in termination or suspension from practice.

AMCB requested that Respondent submit a written response to the charge within thirty days of receipt of the letter-notice. Respondent submitted a timely response to charges on July 25, 2008 and additional information was submitted on August 21, 2008.

A Review Committee comprised of three individuals with no prior involvement with the matter or individual against whom discipline is being considered was duly convened.

The Review Committee has now considered the charges against Respondent and the above-described matters of record. On the basis of the factual findings and reasons set forth

below, the Committee unanimously concludes that grounds for discipline against Respondent exist under sections A.7. and A.9. of the Discipline Policy.

FINDINGS

The Review Committee finds the following facts:

1. AMCB (previously known as ACC) was formed in 1991 by the American College of Nurse Midwives (ACNM) as an independent entity to carry on the existing program of ACNM for certifying the competency of individuals as entry-level nurse midwives.
2. AMCB assumed responsibility for the discipline of ACNM/AMCB certificants through the Discipline Policy, the most recent version of which AMCB adopted in December 2003.
3. Respondent was certified by AMCB on January 21, 2000.
4. Respondent received a temporary order of suspension, and has subsequently been reprimanded by the Kentucky Board of Nursing for inappropriate nursing actions. These inappropriate actions include:
 - a. Prescriptions for controlled substances written on the following dates:
 - March 2007 (Lortab)
 - January 22, 2008 (Phentermine)
 - January 29, 2008 (Phentermine)
 - January 31, 2008 (Lortab)
 - February 12, 2008 (Phentermine)
 - b. Practicing outside her nurse-midwifery scope of practice:
 - Scope of practice did not include controlled substances.
 - Nurse-midwifery practice guidelines did not include treatment of obesity.
5. Respondent disputes that she wrote the January 31, 2008 prescription for Lortab. As indicated in the Order of Immediate Temporary Suspension, she claims that the patient must have stolen her prescriptive pad and forged the prescription for Lortab.
6. Respondent was counseled by her employer, the Todd County Health Department (TCHD), after the first (March 2007) prescription. A second Collaborative Agreement for Prescriptive Authority (that still did not allow prescription of controlled substances) was signed on January 22, 2008.
7. On or about February 3, 2008, TCHD became aware of the second prescription for Lortab, allegedly written on January 31, 2008. At that time, Respondent claimed that she had written prescriptions for no controlled drugs since being counseled in March 2007.

However, two prescriptions for Phentermine (dated January 22, 2008 and January 29, 2008) are documented.

DISCUSSION

In this matter we are called upon to decide whether and what discipline is warranted against a CNM who has been sanctioned by a state licensing board.

The Committee is persuaded that the State of Kentucky had ample evidence that the Respondent practiced outside her midwifery scope of practice and outside of the laws of the state. Further, we are persuaded that this behavior occurred repeatedly, and after her behavior being called into question. In addition, the sequence of events described indicates that Ms. McBrearty did not represent her prescribing behavior honestly when confronted the second time. Although Ms. McBrearty has accepted the Kentucky Board of Nursing sanction, her response to AMCB's request for a statement regarding her disciplinary procedure only minimally acknowledges the seriousness of her breach of acceptable standard of professional behavior. Her brief statement mentions only her prescription of a scheduled drug for diet control, does not acknowledge her prescription of oxycodone (Lortab) in violation of the limits of her prescriptive authority and seems to imply that the individual who reported her behavior to the Kentucky Board of Nursing was not justified in doing so. She does not acknowledge practicing outside of the scope of her written practice guidelines. There is no evidence that she has received preparation in the medical management of morbid obesity, a condition that is not encompassed in the Core Competencies for Basic Midwifery Practice.

Based upon the sequence of events as presented in the Temporary Order of Suspension, it appears that Ms. McBrearty misrepresented her prescribing behavior and had, in fact, issued at least two prescriptions for controlled substances after being counseled for prescribing beyond the limits of her license. It is also a concern that Ms. McBrearty does not list her employment at Todd County Health Department on her resume. This omission can be interpreted as an attempt to conceal information related to her employment and subsequent Board action. Omission of this information will not prevent employers and professional boards from accessing information related to suspension of her license as she will always be required to disclose that matter for licensure, privileging and credentialing.

The Committee is persuaded that Respondent has not provided persuasive evidence that she appreciates the responsibilities and obligations that accompany professional certification and licensure. Accordingly, the following sanctions are recommended.

SANCTIONS FOR VIOLATIONS

The Review Committee determines that the following sanctions shall be imposed for the violations found:

1. A Letter of Reprimand is hereby issued. This Disciplinary Report represents a reprimand by the AMCB, expressing significant concerns regarding Respondent's professional behavior and her response to disciplinary proceedings.
2. A fine of \$1,000 is hereby imposed, payable immediately to the AMCB.
3. Compliance with the Kentucky Board of Nursing (BoN) requirements is mandated. The Respondent is required to submit documentation to AMCB upon completion of the requirements outlined in the Agreed Order with the BoN. Failure to submit the information in accordance with the timeline imposed by the BoN shall result in suspension of Respondent's nurse-midwifery certificate.
4. Submission of additional information is required. In addition to those requirements imposed by the Kentucky BoN, Respondent is required to complete a minimum of 15 hours of academic or continuing education coursework addressing issues of scope of practice, certification, licensure, ethics and standards of practice in nurse-midwifery. Proposed coursework shall be submitted to AMCB for approval prior to enrollment.
5. Notification of action upon midwifery license. Respondent shall inform the Executive Director of AMCB in writing of any change in her status regarding her nurse-midwifery license including investigation or sanction by any federal, state or private licensing boards, administrative agency, association or health care organization relating to public health, or safety or midwifery practice, within thirty days of such change. Failure to provide the same on a timely basis may result in revocation of Respondent's certification. Any further finding of improper behavior under AMCB's Discipline Policy may result in suspension of Respondent's midwifery certificate.

Effective: November 4, 2008

REVIEW COMMITTEE

Carol Howe, CNM, DNSc, FACNM, Chair
Leona Vandevusse, CNM, PhD
William McCool, CNM, PhD

Barbara Graves, CNM, MN, MPH, FACNM
AMCB President, Board of Directors