

**BEFORE THE REVIEW COMMITTEE
OF THE ACNM CERTIFICATION COUNCIL**

In the Disciplinary Matter of :
 :
Debra O’Conner, RN, CNM :
 :
Respondent :
 :
 :

DECISION

On August 2, 2002, the ACNM Certification Council (ACC) received written notice from the Washington Chapter of ACNM of possible violations by Respondent Debra O’Conner of ACC’s Disciplinary Policy. The alleged violations concerned two license suspension proceedings of the Department of Health, Nursing Care Quality Assurance Commission, State of Washington (Washington Commission), in Docket Nos. 97-10-A-1098RN, 00-09-A-1077RN and 00-09-1076AP, which resulted in sanctions being imposed against Respondent for unprofessional conduct in the care of patients.

In accordance with ACC procedures, the complaint was reviewed by ACC’s President, who determined that the matters alleged in the notice of possible violation, if true, could constitute grounds for disciplinary action.

Accordingly, by letter dated March 4, 2003, ACC notified Respondent that it had initiated a disciplinary proceeding to determine whether good grounds existed for discipline under the any or all of four provisions of Section VI.A.7. of the Disciplinary Policy:

- A.6. Gross or repeated negligence or malpractice in professional work.
- 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.
- A.2. Failure to provide or update any information required by ACC.
- B.2. Failure to notify ACC within thirty days of a change in status which may bear upon the Disciplinary Policy, including the initiation of a proceeding by a state licensing board relating to midwifery practice.

The notice requested that Respondent submit a written answer to these charges within 15 days of the March 4, 2003 notice. On March 7, 2003, Respondent contacted ACC's Executive Director to request an extension of time in which to answer the charges, which was granted until March 28, 2003.

Subsequently, on March 18, 2003, Respondent requested an additional extension of the time in which to answer, to April 15, 2003. ACC granted the extension contingent on an extension of ACC's expected date to render a decision, to June 23, 2003.

By letter dated April 10, 2003, counsel for Respondent forwarded to ACC copies of portions of the transcripts of the hearings before the Washington Commission, including testimony by Respondent.

On April 15, 2003, Respondent submitted her written answer to the charges, which consisted of a letter-brief and numerous exhibits.

A Review Committee comprised of three Directors of ACC 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 good grounds for discipline against Respondent exist under sections A.6. and A.7. of the Disciplinary Policy; that no grounds for discipline exist under sections B.2. and A.2.; and that the imposition of sanctions is warranted.

FINDINGS

The Review Committee finds the following facts:

1. 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. ACC has assumed responsibility for discipline of ACNM/ACC certificants through the Disciplinary Policy, the most recent version of which ACC adopted October 1998.
3. Respondent was certified by ACNM on September 10, 1977, prior to ACC's assumption of responsibility for certification of nurse-midwives.
4. There is no record or other credible evidence tending to show that Respondent received prior notice of the existence or terms of the Disciplinary Policy, either through an individual communication from ACC to her or by way of publication of the Disciplinary Policy in a place or manner that reasonably likely to come to her attention.
5. At various times during 1997 and 2000-2001 the Washington Commission conducted administrative proceedings relating the status of Respondent's license (A.R.N.P.) to practice as a

nurse-midwife in that jurisdiction, resulting in suspension of her license due to professional misconduct amounting to negligence or malpractice.

6. On March 16, 1998, in Docket No. 97-10-A-1098RN, the Washington Commission accepted a consent agreement resolving charges of unprofessional conduct by Respondent in connection with her care of patients on four occasions during 1995-97. The Commission ordered that her license be suspended for at least 24 months, but stayed that suspension upon compliance with various terms and conditions of her continued practice, including a practice monitor. The effect of the agreed order was to place Respondent on probation as a licensed nurse-midwife in the State of Washington.

7. On September 29, 2000, having reason to believe that Respondent had violated the terms of her probation, the Washington Commission in Docket Nos. 00-09-A-1077RN and 00-09-1076AP issued an Ex Parte Order of Summary Action, suspending without qualification Respondent's license to practice as a A.R.N.P. based upon a finding of "an immediate danger to the public health, safety or welfare."

8. On December 17, 2001, following a hearing provided by statute, the Washington Commission found that Respondent had created an unreasonable risk of harm to two patients under her care, thereby committing professional negligence and violating state law. The Commission ordered that her license be suspended for at least 36 months, but stayed that suspension upon compliance with various terms and conditions of her continued practice, including the close supervision and monitoring of her practice by other professionals. The relief ordered by the Commission also provided that Respondent may submit a request for full reinstatement of her license to practice as a nurse-midwife no earlier than 36 months from the date of the Order, assuming her compliance with the practice terms for that period.

9. Respondent has appealed the Decision and Order in Docket Nos. 00-09-A-1077RN and 00-09-1076AP, and the appeal is pending in the Washington Superior Court in and for King County. The relief ordered in the administrative proceeding has not been stayed.

10. Respondent failed to inform ACC of the existence or outcomes of any of the proceedings conducted by the Washington Commission.

DISCUSSION

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

Our decision is guided by the general principle that a private certification organization like ACC will normally give full faith and credit to the disciplinary decisions of an expert public body such as a state licensing board. As a matter of policy, therefore, the Review Committee will presume that acts of a state licensing board taken pursuant to statutory authority are valid and worthy of respect. That is, absent some facial and compelling reason to believe that the licensing board's decision-making processes violated the licensee's rights to due process, we will not attempt to

decide *de novo* whether the state licensing board acted properly. It is the burden of a certificant charged with violation of the Disciplinary Policy to show such a reason. Although we acknowledge that the presumption of validity may be a difficult to overcome in any particular case, we believe that it is appropriate to ACC's mission and circumstances.

The Committee is persuaded that Respondent has not met her burden of showing some material irregularity in the Washington Commission's processes that would cast doubt on the fundamental correctness or fairness of its decisions. Employing a limited and deferential scope of review of the Washington decisions that resulted in the suspension of Respondent's license, the Committee is satisfied that the Washington Commission acted under lawful authority and valid procedures. Accordingly, we conclude that a basis exists for discipline under section A.6., namely, that Respondent has committed gross or repeated negligence or malpractice in professional work.

Respondent was sanctioned by the Washington Commission, a fact that she obviously does not contest. Consequently, without more, a basis for discipline exists under section A.7. of the Disciplinary Policy, namely, that Respondent has been sanctioned by a state licensing board.

Respondent contends that it would be unfair and unjust to discipline her for failing to furnish ACC with information about the Washington Commission's investigations and sanctions because she was never notified of the disclosure obligations of the Disciplinary Policy. We agree. Our investigation has failed to uncover any recorded instance in which ACC (or its predecessor, ACNM) notified Respondent of the substance or text of the Disciplinary Policy, actually or constructively. Consequently, we do not believe that it would be fair to discipline her for failing to perform an act that she was unaware was required of her. In sum, no grounds for discipline exist under sections B.2. and A.2. of the Disciplinary Policy.

Finally, we are aware that the decision of the Washington Commission in Nos. 00-09-A-1077RN and 00-09-1076AP is the subject of a pending appeal by Respondent, who has asked a reviewing court in the State of Washington to overturn the administrative decision. Respondent argues here that given that her appeal has not been resolved and thus could be successful, both this proceeding and any sanctions that may result from it are premature.

The sanctions imposed by the Washington Commission, however, have not been stayed and thus are currently in effect. Consequently, the Committee believes that it is appropriate and necessary to decide this disciplinary matter notwithstanding the pending appeal. In the event, if any, that her appeal is successful, we will entertain a request by Respondent to reopen this matter for reconsideration of this decision.

SANCTIONS FOR VIOLATIONS

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

1. Suspension of ACC Certification. Respondent's Certification is hereby suspended pending her submission of a written request for full reinstatement as a licensed CNM in the State of Washington, *i.e.*, her compliance with the practice conditions imposed in sections 4.2 - 8 of the Decision and Order of the Washington Commission in Nos. 00-09-A-1077RN and 00-09-1076AP. Upon submission of that written request Respondent's Certification will be reinstated to allow the State of Washington to consider that request. However, if the request for reinstatement as a licensed CNM in the State of Washington is denied, Respondent's Certification will be immediately suspended.

2. Notification of Appeal Status. Respondent shall furnish to the Executive Director of ACC copies of final court orders and opinions relating to her appeal of the decisions of the Washington Commission in Nos. 00-09-A-1077RN and 00-09-1076AP, within 30 days of her receipt of them. Failure to provide the same on a timely basis may result in revocation of Respondent's Certification.

3. Submission of Additional Information. Respondent shall inform the Executive Director of ACC 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. Respondent must notify the Executive Director of ACC immediately if Respondent applies, as a nurse-midwife, for a license or any other credential to practice in any federal, state or private licensing or regulatory board, administrative agency, association or health care organization relating to public health, or safety or midwifery practice. Failure to provide the same on a timely basis may result in revocation of Respondent's Certification.

In the event, if any, that the decision of the Washington Commission in Nos. 00-09-A-1077RN and 00-09-1076AP is reversed or modified on appeal in any respect material to our decision in this case, the Committee will entertain a written petition by Respondent to reopen this proceeding for a determination of the appropriateness of continuing the foregoing sanctions.

Effective: June 23, 2003

REVIEW COMMITTEE

Kathleen Bailey, CNM, MA, MS, Chair
Nancy DeVore, CNM, MS
Karen Zaglaniczny, CRNA, PhD, FAAN

Nancy K. Lowe, President