

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

In the Disciplinary Matter of:

Bernadette Nicole Olivier, RNC, CNM, MSN
Respondent

DECISION

On November 28, 2012, the American Midwifery Certification Board (AMCB) was notified of an October, 2011 Agreed Order between Respondent and the Texas Board of Nursing (BON) in which an encumbrance was placed on Respondent's Registered Nurse license and authorization to practice as a nurse-midwife. This encumbrance placed upon Respondent's license represented possible violations by Respondent of AMCB's Discipline Policy. In accordance with AMCB procedures, the matter was reviewed by a Disciplinary Review Committee comprised of three individuals with no prior involvement with the matter. After review it was determined that the Respondent did not meet the standard of care expected of a Certified Nurse-Midwife and that grounds existed for disciplinary action upon the Certificate.

Action on Respondent's Registered Nurse license was based upon findings that she had violated sections of the Texas Occupations Code and Texas Administrative Code and that she had, as a result of her clinical care, exposed a mother and infant to unnecessary risk, resulting in the death of that infant. Allegations against the respondent included:

- 1) Respondent accepted into birth center care a patient with a history of preterm labor and preterm birth, with a cerclage in place since 16 weeks gestation.
- 2) At the onset of labor at approximately 36w3d gestation, Respondent tried, with significant pain and distress to the patient, to remove remaining cerclage suture
- 3) In the course of preterm labor medicated the patient with opioid analgesia and hydroxyzine
- 4) Failed to provide appropriate intervention, including transfer, to the infant when it experienced respiratory distress
- 5) With the onset of respiratory arrest, ventilated the infant without oxygen for 20 minutes prior to the arrival of emergency services

As a result of these actions, the infant did not survive.

On September 16, 2011, Respondent accepted a settlement agreement including a Reprimand with Stipulations. That order was ratified by the Texas Board of Nursing on October 27, 2011. Terms of the Stipulation included:

- 1) Respondent to attend courses in critical thinking, Texas jurisprudence and ethics, pediatric advanced life support, pharmacological principles of clinical therapeutics and advanced health assessment
- 2) Respondent to practice in a hospital, nursing home or other clinical setting for a minimum of 64 hours per month for 2 years. (Periods of unemployment or employment that did not require advanced practice authorization did not apply to the stipulation period.)
- 3) Supervision by an Obstetrician or CNM on the premises required for the first 6 months of the Stipulation. For the remainder of the stipulation period monitoring of Respondent's practice required every three months.
- 4) Notification of employer that license and authorization to practice was encumbered
- 5) Employer submission of Notification of Employment form and periodic reports to BON attesting to Respondent's capability to practice.

On November 28, 2012, AMCB was notified of the actions of the Texas Board of Nursing dated October 27, 2011. Accordingly, by a letter dated June 7, 2013, 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 Disciplinary 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 conduct which is inconsistent with professional standards, 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. Actual injury to a patient or the public need not be shown under this provision.

AMCB requested that Respondent submit a written response to the charge within thirty days of receipt of the letter-notice. In addition, on June 17, 2013, and February 21, 2014, AMCB requested additional information, including a written statement regarding the circumstances of the Texas BON action, copies of her practice guidelines and patient materials and a practice summary. On July 10, 2013, AMCB received a response from Respondent indicating that Respondent was compliant with her BON order, had returned to school for additional certification and had attained accreditation for her birth center. AMCB received a copy of a de-identified patient chart from the incident in question as well as Respondent's practice policies. AMCB also received communication from Respondent dated March 22, 2014 indicating that she had completed her BON stipulations, was participating in peer review, had attained additional certification as a Family Nurse Practitioner and was receiving periodic visits to the birth facility from the state licensing board.

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 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 6/25/2004.
4. On or about December 11, 2011, Respondent attended the birth of a woman in preterm labor with positive GBS status and parts of a cerclage in place. The woman received opioids and hydroxyzine labor. Treatment of her GBS status was begun less than 4 hours prior to delivery, but 3 hours after admission to the birth center. The infant experienced respiratory distress and arrest, with inadequate response (no oxygen provided) by Respondent and subsequently died.
5. The Texas Board of Nursing cited Respondent for acts or omissions that violated the standard of care for a nurse-midwife.
6. Respondent's license to practice as nursing in the state of Texas was encumbered with stipulations for a 24 month period beginning September 16, 2011. During the period of encumbrance, Respondent was required to have her practice first supervised and then monitored by another practitioner (obstetrician or CNM) and provide periodic reports to the Board of Nursing. Respondent was further required to attend several educational courses including Courses in critical thinking, Texas jurisprudence and ethics, pediatric advanced life support, pharmacological principles of clinical therapeutics and advanced health assessment
7. Respondent has shown documentation of compliance with the substantive requirements mandated by the Texas Board of Nursing.

DISCUSSION

In this matter we are called upon to decide whether and what discipline is warranted against a CNM whose license to practice nursing has been encumbered for failure to practice within the standard of care required of a CNM and who has subsequently met BON requirements to regain unrestricted licensure.

The Committee is persuaded that there is evidence that Respondent's practice was inconsistent with professional standards, reflecting practice that created unnecessary danger to a patient's life, health or safety. Respondent's practice resulted in sanction by a state licensing board.

Respondent has shown documentation of compliance with all requirements mandated by the Texas Board of Nursing.

Respondent has been mostly responsive to requests for information from AMCB. She has furnished a de-identified copy of patient records and her practice policies. She did not provide the requested practice summary nor a response and explanation specific to the incident under review. Her written responses demonstrate understanding that her care in the incident under review was substandard. Respondent has taken tangible actions to improve her care.

Submitted policies are adequate but outdated in some areas (specifically genetic screening). There is no specific delineation of circumstances that require consultation and/or transfer from Birth Center care. There are references to need for consultation or referral embedded in policies/procedures related to some common clinical situations (e.g. hypertensive disorders in pregnancy) but no easily referenced document that outlines policies for consultation and referral.

SANCTIONS FOR VIOLATIONS

The Review Committee agrees with the sanctions imposed by the Texas Board of Nursing. The Committee does not recommend actions upon Respondent's certificate at this time. However, the Committee recommends that Respondent receive a strong letter of reprimand and fine, noting that if subsequent deviations in standard of care are documented the Committee recommends sanctions upon her certificate. The Committee requires that Respondent update her practice policies including a specific document defining those clinical situations that require consultation, referral or transfer from Birth Center care. These documents must be submitted to AMCB no later than May 1, 2015 along with a fine in the amount of \$1,000.

REVIEW COMMITTEE

Carol Howe, CNM, DNSc, FACNM, Chair
Nancy Jo Reedy, CNM, MSN, FACNM
Michele Peters-Carr, CNM, MSN

Cara Krulewitch, CNM, PhD, FACNM
AMCB President, Board of Directors
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