

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

In the Disciplinary Matter of:

Joey Lynn Pascarella

Respondent

DECISION

On August 1, 2012, the American Midwifery Certification Board (AMCB) was notified of an April 9, 2012 Order for Summary Suspension of Respondent's Registered Nurse license and Registered Nurse Midwife Certification by the Maryland Board of Nursing. The Summary Suspension of Respondent's license represented possible violations by Respondent of AMCB's Discipline Policy. Action on Respondent's Registered Nurse license and Nurse-Midwife Certification was based upon findings that she had been practicing as a midwife without licensure or required collaborative agreement with a physician. Further Respondent had not received Board of Nursing permission to practice in a home birth setting. Multiple patient complaints, including accusations of abandonment and substandard care resulting in maternal and neonatal hospitalizations and an intrauterine fetal demise were cited. On May 21, 2012, the Maryland Board of Nursing amended the Order of Summary Suspension to include an additional complaint related to substandard care of a trial of labor after cesarean. Based upon the egregious nature of the complaints and a potential threat to public safety, the decision was made by the president of AMCB to suspend Respondent's nurse-midwifery certificate on October 16, 2012 pending review by a Disciplinary Review Committee. Disciplinary review was deferred in anticipation of outcomes of the Maryland Board of Nursing investigation and final disposition. However, that process has not advanced and a decision was made to proceed with the review. 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 sufficient grounds for discipline existed.

Respondent was notified on October 16, 2012 of the initiation of the AMCB Disciplinary Process, including the temporary suspension of her certificate. On November 15, 2012, AMCB received a response from Kathy Anne Mancusi, LLC, attorney for Respondent, indicating Respondent's intent to cooperate with the review process and requesting opportunity to meet with the review committee. The request to meet was denied as the disciplinary review process does not include hearings and other complainants have no opportunity for rebuttal. Respondent submitted some documents for consideration on 11/15/12. On July 13, 2013, Respondent was notified that the disciplinary review process would proceed, and she was given the opportunity to submit any additional written materials that she wished to have considered. AMCB has received no response.

On August 1, 2012, AMCB received notification from the Maryland Board of Nursing regarding the Summary Suspension of licensure of Ms. Pascarella's licensure. Five Complaints were cited:

Complaint#1: (Patient A)

Home birth of 11#3oz infant with postpartum hemorrhage and hypoglycemic infant. Patient alleged that Respondent failed to recognize and treat ongoing hemorrhage and "jittery" baby, leaving the patient's home before the mother and baby were stable. Mother and infant required hospitalization.

Complaint #2: (Patient B)

Allegations of abandonment by patient at 38 weeks gestation. Patient complained that Respondent cited "poor communication and lack of trust" and failed to provide adequate referral. Respondent cited negative online posts by patient.

Complaint #3 (Patient C)

Practicing without a license and lack of proper supervision of labor. Maryland Board of Nursing was notified by Virginia Board of Nursing that Respondent had attended a home birth in Virginia in which after artificial rupture of membranes (with meconium) at 9 pm (7 cm dilated), Respondent went home to sleep and did not return until 6 am, at which time patient was transported to the hospital for cesarean birth. Infant was admitted to the NICU for treatment of infection. Virginia Board of Nursing noted that at the time of this incident Respondent lacked active licensure in either Virginia or Maryland.

Complaint #4 (Hospital B)

Failed homebirth with intrauterine fetal demise. Maryland Board of Nursing was notified by Virginia Board of Nursing of complaint by Hospital B of transport of Respondent's home birth patient without audible fetal heart tones. Patient was noted by two physicians to be high risk and inappropriate for home birth.

Compliant #5 (Patient D)

Attempted vaginal birth after cesarean (VBAC) at home transported to hospital. Patient had been attended by Respondent in early labor, but left patient with unlicensed attendant to attend another home birth. Patient reported having been abandoned, and her husband ultimately called EMS for transport to the hospital.

In the course of its investigation, the Maryland Board of Nursing noted that a lapse in licensure of approximately 4 months occurred between June 28, 2011 and October 17, 2011. During that time, ten (10) home births were attended. Further, Respondent's required Collaborative Agreement with a physician was rescinded on March 27, 2012. Further, Respondent neither requested nor received permission to deliver in the home setting until 11/15/11 in spite of her attorney's acknowledgement that she had attended 55 – 60 home births per year since 2007.

Because the Maryland Board Action cited complaints that had arisen from care provided in Virginia, further inquiry by the Disciplinary Review Committee revealed that based upon the investigation of cases reported to the Virginia Board of Nursing, Respondent's license to practice in Virginia was revoked on February 13, 2013. Respondent "neither admits nor denies the Findings of Fact or Conclusions of Law, but waives her right to contest..." Respondent did consent to the revocation of her Virginia license. Respondent may not reapply for licensure for 3 years, and reinstatement requires a three-fourths vote of the Virginia Board of Nursing. It should be noted that Virginia participates in a multi-state compact, and thus action on Respondent's license in Virginia applies to other states in the compact.

In defense of her actions, Respondent submitted to the AMCB several documents, including:

- Response of her attorney, Ms. Mancusi dated 11/15/12
- Statement regarding Patient B who had accused Respondent of abandonment at 38 weeks, including online posts
- Documentation of renewal of Virginia license on 11/20/2010
- Copy of discharge summary for Patient A (delayed postpartum hemorrhage)
- Statement regarding Patient A (postpartum hemorrhage and neonatal hypoglycemia) including relevant charting.
- Copy of home birth consent for Sacred Journey Midwifery, Respondent's home birth service. Of note, the consent form places "primary responsibility for all decisions, procedures, and outcomes regarding my prenatal, birth, and postpartum care" on the patient. The patient further signs a "release from all liability for complications which may arise during the course of my pregnancy, birth or postpartum as a result of my [patient's] decision and my choice to birth my child at home."

In its October 16, 2012 notification to Respondent it was noted that AMCB had identified possible violations of the following breaches of professional conduct as explicated in the AMCB Disciplinary Process:

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

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 7/29/2005.
4. The Maryland Board of Nursing has suspended Respondent's license and the Virginia Board of Nursing has revoked Respondent's license for acts or omissions that violated the standard of care for a nurse-midwife in their respective states.
4. Respondent consented to Virginia Board of Nursing order of revocation without admission or denial of allegations.
5. Although Respondent disputes some allegations regarding the specifics of patient care for Patients A and B (Maryland complaint), she has not disputed complaints by Patients C and D nor the hospital complaint (Maryland complaint) in her response to AMCB. The following facts have been substantiated:
 - a. Respondent practiced without a safe mechanism for physician consultation, collaboration and referral (per consent form "no formal physician backup), a violation of the Standards for Midwifery Practice.
 - b. Respondent practiced for a period of time in both Virginia and Maryland without a valid license.
 - c. Respondent practiced home birth without permission of the Maryland Board of Nursing. She had a collaborative agreement from 12/2005 – 11/2011 that identified two practice settings, a birth center and a hospital. Respondent has performed home births since 2007.
 - d. Respondent performed home births with patients of high risk status, including previous cesarean, hypertension, gestational diabetes and obesity, in spite of consent form that states "...CNM provides care to women who have low-risk, uncomplicated pregnancies..."

- e. Respondent prescribed Ambien for a patient in Virginia without prescriptive authority.
- f. Respondent left Patient C (41 weeks with meconium stained amniotic fluid and dilated to 7 cm) for a period of nine hours before returning and arranging for transfer to the hospital.
- g. Respondent left Patient D (attempting VBAC) with an unlicensed attendant to attend the birth of another client. There was no reliable, safe mechanism for labor supervision in the event to two simultaneously laboring clients.

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 suspended in one state and revoked in another for failure to practice within the standard of care required of a CNM.

The Committee is persuaded that the Respondent's practice was characterized by willful disregard of the Standards for the Practice of Midwifery ("Standards") and the laws of the states of Maryland and Virginia. She practiced without a "safe mechanism for obtaining medical consultation, collaboration and referral" (Standard II[2]), without current, accurate "written practice guidelines" (Standard V) and was not "in compliance with the legal requirements of the jurisdiction" (Standard I[3]); Maryland (no permission for home birth, no license) and Virginia (no license).

Further, aspects of Respondent's patient care, specifically, leaving high risk patients in a home environment unsupervised for long periods of time, place patients at unreasonable risk and endanger the patient's health and safety.

Moreover, the Committee expresses strong concern for Respondent's practice of delivering patients with significant risk factors at home. These include patients with severe obesity, gestational diabetes, hypertension and previous cesarean birth. Further concern is expressed at Respondent's attempt to avoid accountability and liability by stating in her informed consent form that the patient assumes "primary responsibility for decision-making, decisions, procedures and outcomes" and releases [Respondent] of "all liability for complications which may arise during the course of my pregnancy, birth, or postpartum as a result of my decision and my choice to birth my child at home."

The Committee is persuaded that there is evidence that Respondent's practice was in violation of professional conduct as delineated in the AMCB Disciplinary Process. Specifically, Respondent's practice resulted in sanction by two state licensing boards (A.7) and was inconsistent with professional standards, reflecting practice that created unnecessary danger to a patient's life, health or safety (A.9).

SANCTIONS FOR VIOLATIONS

The Review Committee agrees with the sanctions imposed by the Maryland and Virginia Boards of Nursing. Accordingly, the Review Committee recommends revocation of Respondent's AMCB certification. Further, the Committee recommends that reinstatement of certification should require completion of a basic midwifery education program and a vote of two-thirds (2/3) of the membership of the AMCB Board of Directors.

Executive Committee for Discipline Discussion

Following full consideration of the Disciplinary Review Committee's finding of facts and conclusions, the AMCB Executive Committee for Discipline affirms the Committee's findings and determines that the following sanctions shall be imposed for the violations found:

Revocation of AMCB certification. Respondent's certification is hereby revoked.

Notification of Certification Status. AMCB will notify the State of Maryland Board of Nursing of the revocation of the Respondent's certification.

Effective: 11-11-13

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