

**BEFORE THE
AMERICAN MIDWIFERY CERTIFICATION BOARD**

In the Disciplinary Matter of:

Robin Weisbrod

Respondent.

DECISION

On November 3, 2005, the Virginia Joint Boards of Nursing and Medicine revoked the license of Respondent Robin J. Weisbrod, CNM to practice as a Nurse Practitioner (*i.e.*, nurse-midwife) in the Commonwealth of Virginia. On November 30, 2005 the revocation judgment was forwarded to the AMCB by a staff member of the American College of Nurse-Midwives. AMCB verified the authenticity of this judgment by obtaining a copy of the judgment directly from the Joint Boards of Nursing and Medicine.

In accordance with AMCB procedures the AMCB President reviewed the documentation and determined that the matters alleged in the judgment could constitute grounds for disciplinary action.

Accordingly, by letter dated October 27, 2006, AMCB notified Respondent that it initiated a disciplinary proceeding to determine whether good cause existed for imposing discipline under the following provisions of the Disciplinary Policy:

A.6 Gross or repeated negligence or malpractice in professional work.

A.7 Limitation or sanction by federal, state or private licensing board, administrative agency, association or health care organization related to public health or safety or midwifery practice.

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. Actual injury to a patient or the public need not be shown under this provision.

The letter notice requested that Respondent submit a written answer to these charges within thirty days of the notice. Respondent provided a letter of explanation dated November 24, 2006. Members of the Disciplinary Review Committee then sought to obtain certain additional material from Respondent. In a telephone conversation on

December 15, 2006, AMCB's Executive Director, Carrie Bright, requested the following documentation:

1. Any physician agreement documents (with signature and dates) with physicians who served as Respondent's consultants.
2. A copy of Respondent's practice guidelines especially the criteria for consultation, referral and transport.
3. The distance and travel time from the patient's home to the Hospital (in the case that was considered before the Virginia Board of Nursing).
4. Any documentation (i.e. informed consent, home birthing disclosure statement, provider/client agreement) that was signed by this patient.
5. All patient records related to this case: prenatal and inpatient.

In response, Respondent provided a letter dated December 19, 2006, and a copy of item # 5, the patient records. In a letter from the Chair of the Disciplinary Review Committee dated February 6, 2007, the Committee again requested the other items described above. Respondent subsequently furnished a packet of information that included all requested items except item # 3, the distance from home to hospital.

A Disciplinary Review Committee, comprised of three individuals with no prior involvement with the matter or Respondent, was duly convened.

The Committee 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 concluded that good grounds for discipline against Respondent exist under section A.6, A.7 and A.9 of the AMCB Disciplinary Policy and that the imposition of sanctions is warranted.

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 has assumed responsibility for discipline of ACNM/ACC/AMCB certificants through the Disciplinary Policy, the most recent version of which AMCB adopted December, 2003.
3. Respondent was certified by AMCB on June 30, 2000.

4. On or about June 3, 2005 Respondent provided intrapartum services to Patient A. Care of this patient is detailed in the Order (dated November 3, 2005) before the Committee of the Joint Boards of Nursing and Medicine of Virginia. Respondent's care deviated substantially from accepted standards of care, including providing services at 44 weeks gestation with prolonged rupture of membranes in the presence of meconium stained amniotic fluid, fetal heart decelerations and a second stage of labor exceeding 12 hours. The patient was ultimately transported to the hospital by personal car without a trained attendant, rather than by ambulance or accompanied by the midwife. Upon transfer of care to the hospital, the infant of Patient A was found to be dead.

5. Respondent's license to practice as a nurse practitioner (nurse-midwife) was revoked by order of the Committee of the Joint Boards of Nursing and Medicine in Virginia on November 3, 2005.

6. During the time in question, Respondent's practice as a Certified Nurse-Midwife was not in compliance with the Regulations Governing the Licensure of Nurse Practitioners (18 VAC90-30-10 et seq.) and the Regulations for Prescriptive Authority for Nurse Practitioners (18 VAC 90-40-10-et seq.) of the Commonwealth of Virginia. Specifically, Respondent:

- (a) was not practicing "in collaboration with and under the medical direction and supervision of a licensed physician" (18VAC90-30-120 A);
- (b) did not have written protocols that met the definition/standard required by regulation (18VAC90-3-10), a "written statement, jointly developed by the collaborating physician(s) and the licensed nurse practitioner(s)...";
- (c) "possessed and offered to administer Schedule VI controlled substances to patients without holding the prescriptive authority to do so." (Order of the Committee of the Joint Boards of Nursing and Medicine of the Commonwealth of Virginia, November 3, 2005; acknowledged in Respondent's letter dated November 24, 2006).

Discussion

In this matter we are called upon to decide whether and what discipline is warranted against a CNM whose license has been revoked for negligence or malpractice in professional work, and has otherwise engaged in unprofessional conduct.

Respondent has acknowledged that she regrets some decisions that she made in the care of Patient A. However, she continues to justify many decisions that clearly exceed the boundaries of safety. In fact, written materials that she provided to her patients indicate her disregard of accepted basic obstetrical tenets (page 000116: "We consider the normal time frame [gestation] to be 40-44 weeks from the first day of your last menstrual period.") and deviations from the ACNM standard of care requiring a consulting relationship with a physician (page 000353: Important numbers list – "Back-Up OB [if you want one]"). Patient records document that the risks of postdates

gestation were not discussed until 43 weeks. Further, in the intrapartum period, no recommendation to transfer to the hospital was documented until 0140 on June 6, 2005, 54 ½ hours after spontaneous rupture of membranes, 27 hours after the identification of meconium stained fluid, 14 ½ hours after complete dilatation was noted, 5 ½ hours after active pushing was initiated and 40 minutes after variable decelerations were identified. From the documentation provided, at no time was a physician consulted.

Respondent's license to practice as a nurse practitioner (nurse-midwife) was revoked for a period of 3 years and she was reprimanded in her practice as a professional nurse. These actions were taken not only as a result of Respondent's care provided to Patient A, but also because she was not in compliance with Regulations governing the practice of nurse-midwives in the Commonwealth of Virginia. Standards of Care for the Practice of Midwifery (American College of Nurse-Midwives, 2003) require that CNMs practice "in compliance with the legal requirements of the jurisdiction where the midwifery practice occurs." Respondent failed to meet the state requirements of 1) having a supervising physician, 2) having written practice guidelines approved by the physician consultant and 3) dispensing medications without prescriptive privileges. Respondent believes she had a "verbal" agreement for physician consultant services but these physicians were reluctant to acknowledge the relationship due to fear of negative repercussions. If true, this "informal" relationship still did not meet legal requirements, and a verbal "informal" agreement certainly did not meet any legal requirement for the dispensing of medication.

The Committee is concerned that although Respondent acknowledges the patient's responsibility for decision-making (see letter dated November 24, 2006: "...clients have the primary responsibility for their care..." "...inform them of these choices without prejudice..." "giving control and responsibility to the client."), she failed to display an equal understanding of the midwife's responsibility to make safe recommendations. Whereas the CNM is obligated to inform the patient of her options, s/he is also attending the birth as an informed professional and is obligated to provide guidance and recommendations representing the safest course of action. It is not enough merely to present options "without prejudice," as Respondent suggests, but also to give the patients the benefit of her expertise. When there is clearly a safer choice, the CNM must recommend that choice and document that she recommended it.

The Review Committee concludes that Respondent has engaged in conduct that violates AMCB Disciplinary Policies A.6, A.7, A.9, and recommends that disciplinary sanctions be imposed.

SANCTIONS FOR VIOLATIONS

The AMCB Board of Directors, following consideration of the Review Committee's finding of facts and discussion, determines that the following sanctions shall be imposed for the violations found:

1. **Revocation of AMCB certification.** Respondent's certification is hereby revoked. Effective January 1, 2010, she may re-apply for certification under then current rules regarding certification and with the following stipulation:
 - a. Respondent must successfully complete a nurse-midwifery/midwifery education program approved by the ACNM DOA.
2. **Notification of Certification Status.** AMCB shall notify the Commonwealth of Virginia Board of Nursing of the revocation of the Respondent's certification.

Effective: April 30, 2007

AMERICAN MIDWIFERY CERTIFICATION BOARD
Barbara W. Graves, CNM, MN, MPH, FACNM
Board Chair and President

AMCB REVIEW COMMITTEE
Carol A. Howe, CNM, DNSc, FACNM, Chair
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