

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

In the Disciplinary Matter of:
Frances Ann Carney (AKA Frances Carney-Scudder)
Respondent

DECISION

In 1991, the American Midwifery Certification Board (AMCB) was granted authority by the American College of Nurse-Midwives (ACNM) for previously issued lifetime Certificates granted to nurse-midwives prior to 1996 so that these Certificants could be enrolled in the AMCB Certificate Maintenance Program. Among those Certificants was Respondent, Frances Carney-Scudder (now known as Frances Carney). At the time of transfer of authority, AMCB noted a Stipulated Settlement and Disciplinary Order dated October 14, 2011 revoking Respondents' Registered Nurse license, Nurse Midwife [California] Certification, Nurse-Midwife Furnishing certificate, Nurse Practitioner [California] certification and Nurse Practitioner Furnishing certificate by the California Board of Registered Nursing. The Revocation was suspended and the Respondent was placed on probation for a period of three years.

The sanction of Respondent's license and state certificates represented possible violations by Respondent of AMCB's Discipline Policy. However, attempts to contact Respondent regarding both her need to comply with Certificate Maintenance Program requirements and the actions on her license were unsuccessful. Ultimately, Respondent applied for a new employment position and noted on the AMCB website that her certificate had lapsed. On October 20, 2014, Respondent contacted AMCB to clarify the status of her certificate. On October 21, 2014 after the AMCB CEO's consultation with the Board of Directors' President and legal counsel, Respondent was notified that she would be allowed to recertify, but at the time of completion of recertification requirements a Disciplinary proceeding would likely be considered. Thus, at the time that Respondent's certificate was issued and according to in accordance with AMCB procedures, the matter was reviewed by the President of AMCB who determined that sufficient evidence existed to refer the matter for review by a Disciplinary Review Committee comprised of three individuals with no prior involvement with the matter.

Respondent was notified on January 11, 2016 of the initiation of the AMCB Disciplinary Process. On February 3, 2016, AMCB received a response from Abigail Duffy, attorney for Respondent, indicating Respondent's intent to cooperate with the review process and responding to the charges presented.

Action on Respondent's Registered Nurse license and Nurse-Midwife Certification was based upon findings of involvement in a case of fetal injury in which her employer (Kaiser Permanente) stipulated that Respondent and her collaborating physician were liable. Respondent was charged with gross negligence after assuming care of a laboring patient who had been

completely dilated and pushing for approximately one (1) hour. The fetal heart rate tracing had been noted to have minimal variability with decelerations for approximately 25 minutes when Respondent assumed care. After a total of more than 2 hours of pushing, the fetal head was on the perineum where it remained for 17 minutes. At birth, pea soup meconium was seen and the infant was noted to be limp and apneic. Profound birth injury as a result of hypoxia was diagnosed. Respondent was faulted for removing the fetal scalp electrode when the head began to crown employing intermittent auscultation when the fetal head reached the perineum, and for failing to hasten birth upon crowning with an episiotomy in the presence of a previous non-reassuring fetal heart rate tracing. Of note, the Stipulated Settlement and Disciplinary Order states that although “Respondent timely filed her Notice of Defense contesting the Accusation” the Board of Nursing also acknowledges that Respondent “is admitting responsibility at an early stage in the proceedings.”

Further, Respondent has also been sanctioned by the South Carolina Board of Nursing (Department of Labor, Licensing & Regulation) for violations of prescriptive authority. Specifically, Respondent stipulated that she had asked her preceptor to provide prescriptions for patients that the preceptor had not personally seen or examined. Sanctions included a public reprimand, a \$1,500 fine, and the requirement of courses in Legal Aspects, Ethics, Disciplinary Actions and Delegating Effectively.

In addition, a component of the Disciplinary process in both Boards of Nursing (California and South Carolina) addresses an acknowledged history of substance abuse (alcohol) and stipulations related to Respondent’s alcoholism. A stipulation for licensure in South Carolina was completion of the Recovering Professional Program and a supervised probationary license for a minimum of one year.

In a letter dated January 5, 2016, Respondent was notified that AMCB had identified possible violations of the following breaches of professional conduct as explicated in the AMCB Disciplinary Process:

A.5: Habitual use of alcohol or any other substance of abuse, or any physical or mental condition that impairs competent and objective professional performance.

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 jury 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 defense of her actions, Respondent has submitted to the AMCB, through her attorney, a letter responding to each of these charges. The response includes the following assertions:

- Respondent acknowledges dependence upon alcohol (A.5). Circumstances of the discovery of this dependence are not clear, but Respondent acknowledges that she failed a drug test while at work, although denying that she was impaired. Respondent has sought treatment for her alcoholism and has completed all stipulations and requirements imposed by regulatory Boards. She has documented five (5) years of sobriety without relapse. She has disclosed her dependency truthfully to all hiring and credentialing bodies related to her employment as a CNM.
- Respondent acknowledges sanctions by two (2) Board of Nursing, California and South Carolina (A.7).
 - California sanctions include revocation of the RN license, certifications (state) as a nurse-midwife and a nurse practitioner and furnishing authority as a nurse-midwife and nurse practitioner. Revocations have been stayed and Respondent was placed on probation for three (3) years. Respondent contends that the investigation of the fetal injury complaint was hindered by failure to depose Respondent and the nursing staff that cared for the patient in question. Further, Respondent asserts that she was not allowed to view three (3) minutes of the fetal monitor strip although she believes that the portion of the strip to which she had access did not require intervention. Respondent further contends that, although she initially filed an intent to contest the accusation, the Kaiser facility by whom she was employed and insured elected to settle the malpractice case and Respondent did not have resources sufficient to engage her own attorney. As a result, Respondent elected not to contest Board of Nursing accusations. Respondent then moved to South Carolina and as a result, the California Board of Nursing sanctions have been tolled.
 - Upon applying for licensure in South Carolina, Respondent disclosed sanctions imposed by California, as well as her history of alcoholism. As a result, she was issued a probationary license and required to complete the Recovering Professional Program, practicing under the supervision of a preceptor. In her response, Respondent does not acknowledge the South Carolina disciplinary proceeding in which, according to Board sanctions, Respondent violated Rules related to prescriptive authority, specifically, asking her preceptor to sign prescriptions for patients not seen or examined by the preceptor.
- Respondent disputes engaging in conduct which is inconsistent with professional standards. Respondent states that she at all times has practiced in a professional manner and “considers the delivery of babies to be one of the most important acts any medical professional can perform.”
- Respondent requests that AMCB dismiss the pending Disciplinary Proceeding.

In reply to a request for additional information regarding identification of her substance abuse, the circumstances of her positive drug screen at work and the circumstances surround the Kaiser case, the Respondent provided the following responses.

- With regard to identification of substance abuse, the Respondent self-reported to the Kentucky Board of Nursing, but moved to South Carolina prior to beginning the recovering professional monitoring program. A supervisor noted alcohol on Respondent's breath and a blood draw revealed a blood alcohol level of .051%. (Legal cut-off for intoxication is .08%)
- With regard to the Kaiser case, Respondent provided a copy of the labor records in her possession, including provider notes and RN notes. No FHR tracing was available.

The Review Committee has now considered the charges against Respondent and the above-describes 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.5 and A.7 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 June, 2007.
3. Respondent was certified by AMCB on January 11, 1988.
4. Respondent acknowledges a history of alcoholism, has received treatment and has remained sober for over five (5) years.
5. The California Board of Nursing has revoked Respondents RN license and state certifications as a nurse-midwife and nurse practitioner. Said Revocation has been stayed and Respondent placed on probation for three (3) years. As a result of Respondent's move to South Carolina, California Board of Nursing sanctions have been tolled.
 - a. Respondent stipulated to charges prior to full Board of Nursing investigation.
 - b. Adequacy of investigatory process is not clear.
 - c. Blood gases drawn after birth (pH 6.85; Base Excess -24) indicate fetal compromise for an extended period of time.

6. The South Carolina Board of Nursing, upon Respondent's application for licensure, required one (1) year of probation and supervised practice, as well as completion of the Recovering Professionals Program based upon Respondent's history of alcoholism.
 - a. Respondent self-disclosed.
 - b. Respondent successfully completed monitoring program.
 - c. Respondent has been sober for more than 5 years.

7. The South Carolina Board of Nursing issued a Public Reprimand on Respondent's license for violation of prescriptive authority while on probation.
 - a. Respondent stipulated to charge.

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 reprimanded in another for failure to practice within the professional standards required of a CNM. The Discussion will consider each circumstance separately.

With regard to the issue of substance abuse, the Committee is persuaded that the Respondent has breached required professional conduct (A.5: Habitual use of alcohol or any other substance of abuse) by virtue of an acknowledged diagnosis of alcoholism. It is of significant concern that a positive blood alcohol level was found in the work environment, even though it did not rise to the level of frank intoxication. Respondent is to be commended, however, for her acknowledgment of the problem and for her more than 5 years of sobriety. Further, she has behaved professionally in her reporting of her history to regulatory and credentialing agencies.

With regard to the clinical care of a laboring patient at a Kaiser facility, the Committee is persuaded that inadequate data are available on which to make a clear determination of standard of care. It is of concern that there is no progress note from Ms. Scudder for the last two hours of pushing and RN documentation is similarly scant. In particular, there is inadequate documentation during the period of time that the fetal scalp electrode was removed and intermittent auscultation was used. A prolonged period of time with the fetal head on the perineum can be safe if fetal status is reassuring, but it can also be associated with a terminal bradycardia. It is unclear whether intermittent auscultation was done with a Doppler or with a fetal monitor. In the latter case, providers might have assumed that some documentation existed. Blood gasses suggest fetal compromise for an extended period of time.

It is also of concern that Respondent was not given access to the fetal heart rate tracing, or allowed to be deposed in the liability action in this case. It is of further concern that the Respondent stipulated to a California Board of Registered Nursing settlement in which the level of investigation is not clear, and no hearing was conducted. Lack of documentation of an adequate investigation makes determining the standard of care by this Committee unfeasible. Care provided prior to the last hour of the patient's labor appears to meet standard of care.

With regard to the sanction by the South Carolina Board of Nursing related to violation of requirements for supervision during Respondent's period of monitored practice, the Committee is persuaded that, by virtue of Respondent's stipulation, a breach of professional conduct (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) occurred. Certificants are responsible for understanding and complying with regulatory requirements.

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 reflected habitual use of alcohol (A.5). The Committee notes Respondent's professional conduct with regard to her alcohol abuse in terms of seeking treatment, reporting honestly and remaining sober for a prolonged period of time. No clear determination is made with regard to 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.

SANCTIONS FOR VIOLATIONS

Accordingly, the Review Committee recommends a letter of Reprimand be issued by the AMCB Board of Directors with the requirement of annual documentation of continued sobriety.

Effective: 6/20/2016

REVIEW COMMITTEE

Carol Howe, CNM, DNSc, FACNM, Chair
Linda Walsh, CNM, PhD, FACNM
Monica Viera, CNM, WHNP, MSN

Cara Krulewitch, CNM, MN, MPH, FACNM
AMCB President, Board of Directors