

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

In the Disciplinary Matter of:

Cecily Benson Floyd, CNM
Respondent

DECISION

On September 8, 2015, the American Midwifery Certification Board received written notice from the Texas Board of Nursing (“Board”) of possible violations by Respondent Cecily Benson Floyd of AMCB’s Disciplinary Policy. The alleged violations concerned charges that Respondent breached standard of care by performing an External Cephalic Version (ECV) inappropriately and, in addition, had inappropriate contact with former patients after charges were filed. Investigation resulted in sanctions being imposed against Respondent for violations of the Texas Administrative Code.

Specifically, Respondent’s license to practice nurse-midwifery was sanctioned for performing an ECV on an actively laboring patient prior to notifying her consulting physician, nursing staff or operating room staff of a change in patient status nor the plan to perform a version.

Further, sanctions were imposed for violation of “professional boundaries of the nurse/client relationship when she discussed her care of Patient Medical Record XXXXXXXX with former Patient YY, and accepted a letter of reference and support from Patient YY, which she later submitted to the Board. Respondent’s conduct resulted in an exploitation of her professional relationship with former Patient YY for personal gain.”

In accordance with AMCB procedures, the complaint was reviewed by AMCB’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 20, 2017, AMCB notified Respondent that it had initiated a disciplinary proceeding to determine whether good grounds existed for discipline under the following provisions of Section I.A. 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.

- 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.

The notice requested that Respondent submit a written response to these charges, including a statement of why discipline should not be imposed and any additional documentation, within 30 days of receipt of the letter.

On April 17, 2017, Respondent submitted her written answer to the charges, which consisted of a letter, a copy of her declaration to the Texas Board of Nursing and Exhibits A-C.

A Review Committee comprised of a Chair (Carol Howe, CNM, DNSc, FACNM, DPNAP, FAAN) and two qualified members (Patricia Murphy, CNM, PhD, FACNM, FAAN; Nancy Jo Reedy, CNM, MPH, FACNM) was duly appointed. On July 7, 2017 Respondent was informed by letter that Ms. Reedy had recused herself from the committee and Patricia Olenick, CNM, PhD was appointed to take her place.

Subsequent to the convening of the Review Committee, at the request of the Committee the AMCB Director Discipline attempted to obtain additional information regarding the allegations of improper contact with former patients. On July 21, 2017, the Texas Board of Nursing declined to provide information. On July 24, 2017, Respondent indicated that her old attorney had left the practice, that she did not believe the patient NG submitted anything in writing to the attorney and that the attorney would not have information on patient AC because the patient was not known to the attorney. At that time, Respondent was requested to provide a CV and practice guidelines in force at the time of the incident in question. Respondent replied on July 26, 2017 sending her CV and statement that there were no practice guidelines in effect at her practice at the time of the incident.

Additional information was also requested of Respondent on July 26, 2017 with regard to documentation of her preparation to do ECV and the approximate number of ECVs performed previously.

On September 26, 2017, Respondent was once again contacted in an attempt to understand the discrepancy between the statement of the Texas Board of Nursing and Respondent's claim that she had not contacted two patients requesting letters of support. Respondent complied with all requests.

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.6. and A.7. of the Disciplinary Policy.

FINDINGS

The Review Committee finds the following facts:

1. AMCB was formed in 1991 by the American College of Nurse Midwives under the initial name of ACNM Certification Council. (ACC) The name was changed to American Midwifery Certification Board (AMCB) 6/14/2005. AMCB exists as an independent entity to carry on the program of ACNM for certifying the competency of individuals as entry-level nurse-midwives and 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 November 2012.
3. Respondent was certified by AMCB on January 18, 2002.
4. The Texas Board of Nursing conducted administrative proceedings relating the status of Respondent's license to practice as a nurse-midwife in that jurisdiction, resulting in a sanction of **WARNING WITH STIPULATIONS, DEFERRED** due to "violation(s) of 22 TEX.ADMIN. CODE 217.11(1)(A), (1)(B), (1)(D), (1)(E), (1)(J), (1)(P) & (4)(A) and 217.12(1)(A), (1)(B), (4)&(6)(D)."
5. As a part of the Agreed Order for Deferred Discipline, the Respondent was required to complete a course in Texas Nursing Jurisprudence and Ethics and a course regarding Respecting Professional Boundaries. Respondent was further required to notify the Board of employment, have her practice monitored by another APRN or MD and provide periodic evaluations to the Board.
6. On April 17, 2017, ACNM received a letter from Respondent. In this letter, Respondent indicated that:
 - a) Prior to the date of the incident (May 9, 2013) she had not been told verbally or in writing that she was prohibited from performing a version
 - b) Her medical staff privileges were "general".
 - c) She had communicated with her consulting physician "every step of the way."
 - d) Arizona and Oklahoma Boards of nursing had reviewed the allegations and found them baseless
7. In the April 17, 2017 letter Respondent also enclosed:
 - a) Sworn testimony to the Texas Board of Nursing
 - b) Exhibits including:
 - 1) an article from dallaschild.com recommending her practice
 - 2) Results of investigation of Texas allegations by Arizona State Board of Nursing dismissing the complaint and granting licensure
 - 3) Documentation of licensure by Oklahoma Board of Nursing

8. In correspondence dated July 26, 2017, Respondent indicated that:
 - a) There were no practice guidelines in effect at the time of the incident.

9. In correspondence dated September 26, 2017, Respondent indicated that:
 - a) She did not contact any former patients. They contacted her.
 - b) She did not discuss Health Protected Information with former patients. When asked by former patients why her license was sanctioned, she replied “I turned a breech baby.”
 - c) She did not request a letter of support nor did she submit one.

DISCUSSION

In this matter, we are called upon to decide whether and what discipline is warranted against a CNM who has been sanctioned for failing to meet standard of care by a state licensing board.

Our decision is guided by the general principle that a private certification organization like AMCB 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 factual 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 AMCB’s mission and circumstances.

The Committee is persuaded that Respondent has not met her burden of showing some material irregularity in the Board processes that would cast doubt on the fundamental correctness or fairness of its decisions. Employing a limited and deferential scope of review of the decisions that resulted in the sanction of Respondent’s license, the Committee is satisfied that the Board acted under lawful authority and valid procedures

Respondent was sanctioned by the Texas Board of Nursing, 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.

Further, we conclude that a basis exists for discipline under section A.9, namely that Respondent engaged 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.”

We find that the Respondent, by her own admission did perform ECV without notifying her consulting physician, the nursing staff or operating room staff prior to performing the procedure, an expectation of any provider. The Review Committee finds no evidence to support Respondent's assertion in her declaration that "the risk associated with this intervention is very small, smaller even than artificial rupture of membranes." Although it appears that the Respondent had experience with the procedure, by her own admission she did not know that she had not been granted the medical staff privileges to perform it. Further, by her own admission, no practice guidelines existed to guide her scope of practice, a requirement of Standard V of the Standards for the Practice of Midwifery (ACNM, 2011).

With regard to the allegations regarding professional boundaries with former patients, the Review Committee was unable to obtain any direct evidence to refute or accept the charge. Thus, the Committee did not address this complaint in its decision.

SANCTIONS FOR VIOLATIONS

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

1. Letter of Reprimand. A Letter of Reprimand shall be placed in Respondent's file.
2. Practice Guidelines. Respondent is required to submit a copy of practice guidelines for her current employment and is expected to develop practice guidelines for any future employment.
3. Respondent is fined \$500.

Effective: 2-7-2018

REVIEW COMMITTEE

Carol Howe, CNM, DNSc, FACNM, FAAN Chair
Patricia Murphy, CNM, PhD, FACNM, FAAN
Patricia Olenick CNM, PhD

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