

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

In the Disciplinary Matter of:

Rose Marie Hoiten, CNM, Respondent

**DECISION**

The American Midwifery Certification Board received written notice from the State of South Dakota Board of Nursing (“Department”), of possible violations by Respondent Rose Marie Hoiten, CNM, of AMCB’s Disciplinary Policy. The violations concerned allegations that Respondent breached standard of care by failing “to adequately perform or document prenatal condition for size/date discrepancy and failed to provide adequate prenatal visits “Further, the Department alleged that Respondent failed “to adequately follow out-of-hospital waiver guidelines by failing to refer prenatal condition for size/date discrepancy” pursuant to named statutes. Investigation resulted in sanctions being imposed against Respondent for the allegations regarding response to intrapartum complications. The allegations regarding medical records and medical collaboration were not sustained. Sanctions included reprimand and required continuing education.

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 April 2, 2019, notified Respondent that it had initiated a disciplinary proceeding to determine whether good grounds existed for discipline under any or all of two provisions of Section VI.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 answer to these charges within 30 days. Respondent replied with her statement regarding the allegations on May 2, 2019, and was

subsequently contacted by AMCB on May 7, 2019, with a request for additional information, Clinical Practice Guidelines in effect at the time of the incident, all consent forms relevant to the allegations and de-identified medical records relevant to the allegations if available. Additional questions were also included. Respondent provided the additional materials on June 6, 2019.

A Review Committee comprised of (Chair; Nancy Jo Reedy, CNM, MPH, FACNM, and Co-Chair, Carol Howe, CNM, DNSc, FACNM) and three qualified members (Heather Swanson, CNM, DNP, FNP, Cassie Applegate, CNM, and Albert Runzel CNM, MSN) was duly convened.

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 Disciplinary Policy; and that the imposition of sanctions is warranted.

### **FINDINGS**

The Review Committee finds the following facts:

1. AMCB, formerly known as the ACNM Certification Council (ACC), was formed in 1991 by the American College of Nurse Midwives (ACNM) as an independent entity to carry on the pre-existing program of ACNM and ACC 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 April 2018.
3. Respondent was certified by ACC, now AMCB on 3/1/2011.
4. Respondent has practiced in a home birth environment and has no known previous history of sanction on her license or certificate.
5. Prenatal care of patient began at 17 weeks gestation and was provided sporadically due to client visiting out of state for prolonged period. Client had history of 5 previous normal pregnancies that all delivered at 42-43 weeks gestation. Client had strong aversion to standard testing and ultrasound. She declined all routine testing in pregnancy including ultrasound. Documentation of refusal was documented on the Education Checklist with client initials.
6. Prenatal visit at 39 weeks gestation noted a fundal height of 32 centimeters. At the following 40 week visit the fundal height was 33 centimeters. Both indicated a significant size/date discrepancy. Client was offered ultrasound/NST at 40 weeks and declined. Client cancelled appointment for 41 week visit.

7. On October 7, 2015, Respondent responded to patient's home after call for labor. Client was 41 6/7 weeks gestation. When arriving at the home, no fetal heart tones were detected. Woman was transferred to hospital immediately.
8. Birth occurred in hospital of stillborn female infant 6# 11 oz.
9. Respondent was sanctioned by the South Dakota Board of Nursing for failing to follow out of hospital waiver guidelines by failing to refer the condition of size/date discrepancy and provision of inadequate prenatal care. Sanctions included: reprimand and mandatory continuing education.

### **DISCUSSION**

In this matter we are called upon to decide whether and what discipline is warranted against a CNM who has been sanctioned for professional negligence or malpractice by a state licensing board.

Our discussion was informed by review of multiple documents, including the Agreed upon Disposition and Waiver of Hearing rendered by the South Dakota Board of Nursing, the Respondent's personal statement, and extensive de-identified copies of the patient records in this case.

Review of these documents lead the committee to the following conclusions:

- a. Prenatal care was inadequate and complicated by client refusal of testing/ultrasound.
- b. Respondent failed to intervene in size/date discrepancy noted at 39 and 40 weeks gestation. It is unclear whether this was poor judgement or lack of adequate documentation of client refusal.
- c. The client was not an appropriate candidate for home birth after 39 weeks when size/dates discrepancy was evident.
- d. The third paragraph of the Informed Consent for Out of Hospital Birth for Journey Home Midwifery states that "failure to follow advice or failure to keep regular prenatal appointments with my midwife will result in my loss of midwifery care..." This indicates the parameters for which the Client would be deemed inappropriate for home birth in this practice.

The Committee is persuaded that the Respondent allowed the client to dictate management in the clearly at-risk situation of size/date discrepancy. Documentation was poor in that the checklist should have been supplemented with a narrative note to convey the depth of the conversation. In addition, the client refusal for evaluation of size/date discrepancy made her inappropriate for homebirth. Accordingly, we conclude that a basis exists for discipline under section A.9., namely, 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

Respondent was sanctioned by the South Dakota Board of Nursing, a fact that she obviously does not contest. Consequently, without more evidence, a basis for discipline exists under section A.7. of the Disciplinary Policy, namely, that Respondent has been sanctioned by a state licensing board.

### **SANCTIONS FOR VIOLATIONS**

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

1. Reprimand of Respondent's AMCB Certification. A letter of reprimand will be issued.
2. Educational Remediation. Respondent will provide evidence of the following no later than six months after Respondent receives letter with AMCB decision.
  - a. Completion of the current Antepartum Module available from AMCB.
  - b. Compose an annotated bibliography that includes 15 articles from scholarly, peer reviewed journals. The appropriate articles must be evidence based, peer reviewed and published within the last 5 years. Articles may be research, meta-analysis or other extensive coverage of the topic. Article must be divided as follows:
    - i. Management of size/dates discrepancy 5 articles
    - ii. Management of postterm pregnancy 5 articles
    - iii. Medical record documentation 5 articles
3. Fine. A fine of \$250 will be assessed.

#### REVIEW COMMITTEE

Nancy Jo Reedy, CNM, MPH, FACNM, Chair  
Carol Howe, CNM, DNSc, FACNM, FAAN, Co-Chair  
Heather Suzette Swanson, DNP, CNM, FNP, IBCLC  
Cassie Lee Applegate, CNM  
Albert Runzel, CNM, MSN

Linda Hunter, CNM, PhD, FACNM  
President, AMCB Board of Directors  
Effective: 11-7-2019