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**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**FILED**

**Department of Health, Division  
of Medical Quality Assurance,**

*Petitioner,*

*vs.*

**Sandra Blankenship,**

*Respondent,*

2005 MAY 11 A 11:59

DOAH case no.: 04-3643PL  
DOH case nos.: 1999-60389, 2000-00292  
Rendition no.: DOH-05-0794-FOF-MW

LJS  
Closed

AT

**FINAL ORDER**

This matter was referred to the Division of Administrative Hearings for a formal administrative hearing. The assigned Administrative Law Judge (hereinafter ALJ) has submitted a recommended order to the Department of Health (hereinafter Department).

**PRELIMINARY STATEMENT**

At issue in this proceeding is whether the Department should discipline the Respondent, a licensed midwife, for violations of statutory and rule requirements governing the practice of midwifery in this State. A two count administrative complaint charges the following: one; the Respondent failed to advise her patient, S.B. that she lacked malpractice insurance coverage, and two; the Respondent failed, during S.B.'s second stage of labor, to timely consult with, refer to, or transfer care to a physician. The Respondent and counsel for the department filed exceptions to the recommended order, which are addressed herein.

**FINDINGS OF FACT**

The agency adopts the findings of fact set forth in the recommended order.

**CONCLUSIONS OF LAW**

The agency adopts the conclusions of law set forth in the recommended order. As to count one of the administrative complaint, counsel for the Division of Medical Quality Assurance (hereinafter MQA) excepts to paragraphs 40, 41, and 43 wherein the ALJ criticized the prosecution of the Respondent for "engaging in unprofessional conduct" based on her failure to notify her patient, S.B., that she lacked malpractice insurance coverage. Section 467.203(1)(a) through (i), Florida Statutes (1999) sets

forth the grounds for discipline of a licensee. Paragraph (f) authorizes discipline for “unprofessional conduct”; paragraph (i) authorizes discipline for a **willful** violation or **repeated** violations of any “provision” of Chapter 467. The Respondent’s failure to inform her patient of her malpractice insurance status violated the specific requirement of section 467.014, Florida Statutes (1999), but to impose discipline for this violation of Chapter 467 required clear and convincing evidence that the violation was willful or repeated.<sup>1</sup> Considering section 467.014, Florida Statutes (1999) and paragraphs (f) and (i) of section 467.203(1), Florida Statutes (1999) in *para materia*, a licensee’s failure to inform a patient of his/her malpractice insurance status should be prosecuted as a violation of the insurance status provision of section 467.014, Florida Statutes (1999); not as “unprofessional conduct” under section 467.203(1)(f), Florida Statutes (1999). Thus, the exceptions are denied. The ALJ found as a fact that the Respondent’s violation of the insurance status provision was neither willful nor repeated; thus, the recommendation that count one be dismissed is accepted. See paragraphs 29, 30, 42, and 43.

Finally, counsel excepts to the recommended penalty for count two; one year suspension of licensure, followed by two years probation. Counsel notes the death of the patient’s baby shortly after delivery and maintains that revocation is the appropriate penalty. However, counsel does not challenge the ALJ’s finding that the evidence did not prove the Respondent was responsible for the baby’s death. See paragraph 53. The evidence of the impact on the baby of the Respondent’s delay (one to two and one-half hours) in transferring the patient to a physician is conflicting. But, it is the function of the ALJ to assess the weight of conflicting evidence and make findings resolving the conflict. The Department lacks the authority to reweigh the evidentiary basis of a finding supported by competent substantial evidence. See section 120.57(1)(f), Florida Statutes (2004); ***Heifetz v. Dept. of Business Regulation***, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). I accept the ALJ’s penalty recommendation.

The Respondent licensee’s exceptions raise evidentiary issues, which were not objected to at hearing, nor are they within the Department’s substantive jurisdiction to consider; therefore, the exceptions are denied. See section 120.57(1)(f), Florida

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<sup>1</sup> Under current law a showing that a licensee’s violation of a statutory requirement is willful or repeated is **no longer required** as a basis for discipline. See section 467.203(1)(i), Florida Statutes (2004).

Statutes (2004); ***Barfield v. Department of Health, Board of Dentistry***, 805 So.2d 1008 (Fla. 1<sup>st</sup> DCA 2001).

Based on the foregoing, the Respondent is found guilty of the count two as charged in the administrative complaint. The Respondent's license to practice midwifery is suspended for a period of one year to be followed by two years of probation. The suspension of the Respondent's license commences on the filing date of this final order. Jurisdiction is retained for consideration of any motion for costs filed pursuant to section 456.072(4), Florida Statutes (2004).

**DONE** and **ORDERED** this 10<sup>th</sup> day of May, 2005, in Tallahassee, Florida.

John O. Agwunobi, M.D., M.B.A., M.P.H.  
Secretary, Department of Health

  
Linda A. Keen, R.N., M.S., J.D.  
Acting Deputy Secretary

A PARTY ADVERSELY AFFECTED BY THIS FINAL ORDER MAY SEEK JUDICIAL REVIEW BY FILING A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH, AND A COPY AND THE FILING FEE AT THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS ARE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. A NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE DATE OF FILING OF THIS ORDER.

A copy is furnished to each of the following:

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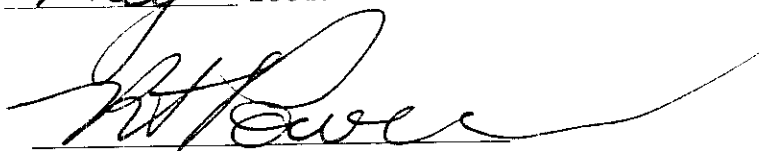
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**CERTIFICATE OF SERVICE**

**I CERTIFY** that a copy of this final order was served by ordinary mail via the United States Postal Service, inter-office mail, or hand delivery to each of the above addressees this 10<sup>th</sup> day of May 2005.

A handwritten signature in black ink, appearing to read "R. Samuel Power", written over a horizontal line.

R. Samuel Power, Agency Clerk  
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