

BEFORE THE BOARD OF MIDWIFERY

STATE OF IDAHO

In the Matter of the License of:

SARAH MARIE DUNN,
License No. MID-33,

Respondent.

Case No. MID-2019-2

**STIPULATION AND
CONSENT ORDER**

WHEREAS, the Idaho Board of Midwifery ("Board") has received information that constitutes sufficient grounds for the initiation of an administrative action against Sarah Marie Dunn ("Respondent"); and

WHEREAS, the parties mutually agree to settle the matter in an expeditious manner in lieu of administrative hearings before the Board; now therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

I.

STIPULATED FACTS AND LAW

1. The Board regulates the practice of midwifery in the State of Idaho in accordance with Title 54, Chapter 55 of the Idaho Code.

2. The Board issued License No. MID-33 to Respondent to practice midwifery in the State of Idaho. Respondent's license is subject to the provisions of Title 54, Chapter 55, of the Idaho Code, and the Board's rules as promulgated at IDAPA 24.26.01, *et seq.*

SUMMARY OF VIOLATIONS

3. Respondent engaged in the following misconduct in the practice of midwifery in the State of Idaho:

- a. **Count I:** Respondent provided midwifery services to a mother pregnant with triplets;
- b. **Count II:** Respondent allowed an unlicensed student to practice midwifery without supervision;
- c. **Count III:** Respondent failed to maintain accurate and complete records for a client;
- d. **Count IV:** Respondent failed to transfer or timely transfer requested client records to other providers;
- e. **Count V:** Respondent provided midwifery services to clients seeking vaginal births after a Cesarean-Section without maintaining required documentation recommending the involvement of a physician during the pregnancy;
- f. **Count VI:** Respondent provided midwifery services to a client with a pre-pregnancy body mass index over thirty-five (35) without maintaining required documentation recommending the involvement of a physician during her pregnancy;
- g. **Count VII:** Respondent failed to maintain a signed record demonstrating that she provided required informed consent documentation to at least one (1) client; and
- h. **Count VIII:** Respondent failed to comply with the Board's informed consent or corresponding record-keeping requirements.

FACTUAL BACKGROUND AND VIOLATIONS

4. At all times relevant to this Stipulation and Consent Order ("Stipulation"), Respondent owned, operated, and practiced as a licensed midwife at Ancient Paths Birth and Wellness, LLC, located in Coeur d'Alene, Idaho.

COUNT I

BACKGROUND

Respondent Provided Midwifery Services to a Mother Pregnant with Triplets

5. In or around June 2015, A.R., a twenty-three (23)-year-old woman, discovered she was pregnant. A subsequent ultrasound, performed on November 5, 2015, revealed that A.R. was pregnant with triplets, and that her estimated due date was March 16, 2016. At the time, A.R. was under the care of a midwife other than Respondent.

6. In or around mid-November 2015, A.R., who lived near the Washington-Idaho border, began receiving care from a physician (“Washington physician”) at Sacred Heart Children’s Hospital (“Sacred Heart”) in Spokane, Washington.

7. In or around January 2016, A.R. informed her Washington physician that she wanted to deliver her triplets vaginally outside of the hospital. Her physician said he could not assist her under such circumstances.

8. Toward the end of A.R.’s pregnancy, her Washington physician informed A.R. that he would be out of town and unavailable to deliver her triplets on her due date. As a result, the physician stated that, before he left town, he would need to induce A.R.. A.R., however, declined to be induced. A.R. spoke to other physicians at Sacred Heart and none of them were willing to deliver her triplets vaginally.

9. In February 2016, A.R. began contacting midwives and other hospitals in hopes of finding a provider willing to deliver her triplets vaginally.

10. On or around February 22, 2016, A.R. contacted Respondent and asked for assistance with her pregnancy because she could not find an available physician willing to deliver her triplets vaginally. At the time, she was thirty-six (36) weeks and five (5) days into her

pregnancy. Respondent stated that she could not deliver the triplets but would assist A.R. in finding a physician willing to deliver them and serve as her doula.

11. On or around February 24, 2016, Respondent contacted Dr. Brown, a physician at Valley Medical Center in Spokane, Washington, about overseeing A.R.'s labor and delivery. Dr. Brown stated that his hospital would not agree to a planned delivery because of the amount of staff it would require to deliver the triplets. Thus, Dr. Brown said he could not accept A.R. as a patient, however, he noted that Valley Medical Center would not refuse care if A.R. arrived in labor the next day on February 25.

12. Respondent understood Dr. Brown's comments to mean that A.R. would be accepted directly into care at Valley Medical upon her arrival. Respondent also wished to be present for the delivery to support A.R. and help educate her regarding why an epidural, antibiotics, and other interventions would create a safer environment for the delivery.

13. Later that same day, on February 24, 2016, Respondent informed A.R. of her conversation with Dr. Brown. A.R. then indicated that she intended to visit Valley Medical Center the next day to be induced for labor.

14. Additionally, Respondent agreed to serve as A.R.'s doula, and she and A.R. spent several hours speaking on the telephone discussing "the possibility of a Cesarean delivery, what that would look like and how she would cope with that outcome." Respondent and A.R. "created a birth plan [and] discussed pros and cons of certain interventions" during the pregnancy process.

15. On February 24, 2016, at approximately 8:00 p.m., A.R. contacted Respondent and said she felt "crampy" and that "labor might start on its own in the next day or two." Because A.R. lived three (3) hours from Valley Medical Center, Respondent said she was worried that A.R. would spontaneously go into labor. As a result, Respondent arranged to have A.R. and her husband

stay the night at her birth center, Ancient Paths Birth and Wellness, located twenty-five (25) minutes from Valley Medical Center but only five (5) minutes from a different hospital, Kootenai Health.

16. On February 25, 2016, at approximately 1:00 a.m., A.R. and her husband arrived at Respondent's birth center. At the time, A.R.'s triplets were thirty-seven (37) weeks and one (1) day in gestational age.

17. Upon A.R.'s arrival at the birth center, Respondent conducted a vaginal exam at A.R.'s request and discovered that her cervix was eight (8)-centimeters dilated and that her first baby was "at about -2 station." Respondent stated that if A.R. spontaneously went into labor it might take too long to travel to Valley Medical Center. Thus, Respondent asked if A.R. wanted to begin driving to Valley Medical Center. A.R., however, declined to do so. Instead, Respondent, with A.R.'s permission, contacted Kootenai Health to discuss the possibility of transporting A.R. to the hospital should she spontaneously go into labor.

18. Respondent was informed by the charge nurse that Kootenai Health did not have the staff to deliver triplets should A.R. go into spontaneous labor and asked Respondent to call back immediately if labor spontaneously started and the patient chose to go to Kootenai Health to deliver.

19. On February 25, 2016, around 12:00 p.m., Respondent conducted a second vaginal examination and determined that she was eight (8)-centimeters dilated and the first baby was still in the same position at the -2 station. Although A.R. was not having contractions, Respondent felt a "swollen" or "slightly bulgy bag of waters" during the examination. At that point, Respondent told A.R. that she "thought she might go into labor" soon, and therefore encouraged her to decide where she wanted to have her triplets delivered.

20. On February 25, 2015, at approximately 12:45 p.m., A.R. informed Respondent that she wanted to travel to Valley Medical Center to prepare for delivery. A.R.'s husband then drove her to the hospital.

21. On February 25, 2016, at approximately 1:30 p.m., A.R. arrived at Valley Medical Center with her husband and Respondent. After receiving antibiotic treatment and an epidural, Dr. Brown induced A.R.'s labor and thereafter, in the early evening, A.R. delivered all three (3) babies vaginally without significant complications.

COUNT I VIOLATIONS

22. All facts set forth in this Stipulation are incorporated into Count I.

23. Respondent provided midwifery services to a client, A.R., who was thirty-seven (37) weeks' pregnant with triplets. For example, Respondent performed the following services:

- a. Discussed delivery options;
- b. Created a birth plan and discussed the pros and cons of various interventions;
- c. Arranged for A.R. to stay at her birth center;
- d. Conducted two (2) vaginal examinations and, in so doing, checked the mother's dilation, as well as the first baby's fetal station and amniotic sac;
- e. Discussed hospital transport and delivery options;
- f. Contacted two (2) hospitals to assess their ability to deliver A.R.'s triplets; and
- g. Identified when A.R. was not in labor.

24. The allegations set forth in Count I constitute a violation of the following laws, rules, and scope and practice standards governing the practice of midwifery in the State of Idaho:

- a. Idaho Code § 54-5510(6) (engaging in unprofessional conduct by violating Board rules and scope and practice standards); Rule 450.01(h) (March 29,

2010) (engaging in unprofessional conduct by violating Board rules or scope and practice standards); and Rule 356.01 (March 29, 2010) (requiring midwives to adhere to the NACPM Scope and Practice Standards).

- b. Rule 356.02(a)(ii) (March 29, 2010) (stating that a midwife “may not provide care for a client with multiple gestation, except that midwives may provide antepartum care that is supplementary to the medical care of the physician overseeing the pregnancy, so long as it does not interfere with the physician’ recommended schedule”).
- c. NACPM Scope and Practice Standard Two (stating that “midwifery actions are prioritized to optimize well-being and minimize risk, with attention to the individual needs of each woman and baby”); Scope and Practice Standard Two (stating that a midwife “bases her choices of interventions on empirical and/or research evidence, verifying that the probable benefits outweigh the risks”); and Practice Standard Two (stating that a midwife “refers the woman or baby to appropriate professionals when either needs care outside her scope of practice or expertise”).

COUNT II

BACKGROUND

Respondent Allowed an Unlicensed Student to Practice Midwifery Without Supervision

25. Engaging in the practice of midwifery in Idaho requires a license, I.C. § 54-5506(4), and practicing midwifery without a license constitutes a misdemeanor offense, I.C. § 54-5506(4).

26. From approximately November 2015 through April 2017, K.D. (“Student”) served as Respondent’s apprentice or student midwife. Student was not licensed to practice midwifery in any state during the relevant time period.

27. In March 2017, Respondent traveled out of state for approximately two (2) weeks. Prior to leaving, she arranged for Student to conduct prenatal and postpartum appointments for some of Respondent’s clients while she was away, although she alleges that she informed her clients that these appointments would not count as an “official part of the record”

28. Respondent spoke with at least nine (9) clients who were scheduled for appointments while she was scheduled to be away. In so doing, Respondent gave her clients the

option of skipping their next appointment, seeing another provider, or meeting with Student without Respondent's supervision and at Respondent's birth center. Respondent asserts that she informed each of these clients that Student was not licensed and that any visit with her "could not count as an official part of the record." Respondent further asserts that nine (9) clients opted to see Student while Respondent was out of town.

29. Respondent asserts that she did not rely upon any of the information gathered by Student during the prenatal and postpartum appointments, they did not affect Respondent's further care of those clients, and they did not result in any negative outcomes.

30. On March 7, 2017, Respondent traveled out of state for approximately two (2) weeks. That same day, Respondent posted a message on her social media account thanking Student for "holding down the fort . . . at the birth center" while Respondent was away. The next day, Respondent posted another social media message thanking Student "for manning the birth center."

31. From March 7, 2017 through March 17, 2017, Student met with at least nine (9) of Respondent's clients at Respondent's birth center, and conducted at least ten (10) prenatal or postpartum appointments without any supervision. In so doing, Student documented these appointments in the medical records for each client.

32. Respondent included an addendum to the medical records for each applicable client stating that Student conducted the ten (10) appointments at issue, and that these appointments were "not an official part of record."

COUNT II VIOLATIONS

33. All facts set forth in this Stipulation are incorporated into Count II.

34. From March 7, 2017 through March 17, 2017, Student conducted ten (10) prenatal or postpartum appointments for nine (9) clients without any supervision and with Respondent's knowledge.

35. The allegations set forth in Count II constitute a violation of the following laws, rules, and scope and practice standards governing the practice of midwifery in the State of Idaho:

- a. Idaho Code §§ 54-5510(6) (engaging in unprofessional conduct by violating Board rules and scope and practice standards); 54-5506(4) (stating it is a misdemeanor for any person to engage in the unlicensed practice of midwifery); and Rule 450.01 (March 29, 2010) (stating that the Board may discipline a licensee for engaging in unprofessional conduct); Rule 450.01(h) (March 29, 2010) (stating that the Board may discipline a licensee for engaging in unprofessional conduct by violating Board rules or scope and practice standards); and Rule 356.01 (March 29, 2010) (requiring midwives to adhere to the NACPM Scope and Practice Standards).
- b. NACPM Scope and Practice Standard Two (stating that "midwifery actions are prioritized to optimize well-being and minimize risk, with attention to the individual needs of each woman and baby").

COUNT III

BACKGROUND

Respondent Failed to Maintain Accurate and Complete Client Records

36. From March 7, 2017 through March 17, 2017, Respondent traveled out of state and was unavailable to meet with any of her clients. Prior to leaving, Respondent advised M.M. that she would not be available to perform M.M.'s next prenatal appointment due to her upcoming trip. As a corollary, Respondent told M.M. that she could skip her next appointment, visit another provider, or have Student conduct the appointment. Respondent also asserts that she informed M.M. that Student was not licensed and that any visit with her "could not count as an official part of the record." M.M. opted to meet with Student while Respondent was away.

37. Respondent failed to document the foregoing discussion with M.M. in her client records.

38. On March 8, 2017, Student conducted the prenatal appointment for M.M. without any supervision. In so doing, Student documented in M.M.'s medical records that she assessed the following information: gestational age, weight, blood pressure, and fetal heart tones. Student also performed a urine test.

COUNT III VIOLATIONS

39. All facts set forth in this Stipulation are incorporated into Count III.

40. The allegations set forth in Count III constitute a violation of the following laws, rules, and scope and practice standards governing the practice of midwifery in the State of Idaho:

- a. Idaho Code § 54-5510(6) (engaging in unprofessional conduct by violating Board rules and scope and practice standards); and Rule 450.01(h) (March 29, 2010) (engaging in unprofessional conduct by violating Board rules, scope and practice standards, or record-keeping requirements); and Rule 356.01 (March 29, 2010) (requiring midwives to adhere to the NACPM Scope and Practice Standards).
- b. NACPM Scope and Practice Standard Five (stating that a midwife “reviews and updates records at each professional contact with the woman”), (stating that a midwife “documents the woman’s decisions regarding choices for care”), (stating that a midwife “clearly documents her objective findings, decision and professional actions”), and (stating that a midwife “documents the woman’s decisions regarding choices for care”).

COUNT IV

BACKGROUND

Respondent Failed to Transfer or Timely Transfer Client Records to Other Providers

41. Respondent failed to transfer or timely transfer requested medical records for least three (3) clients after they began receiving midwifery care from other providers. These clients include L.W. (“Client 1”), T.D. (“Client 2”), and E.M. (“Client 3”).

Client 1

42. Sometime on or around July 20, 2017, Inga Arts (“Midwife 1”), began providing midwifery care for Client 1, who received midwifery care from Respondent earlier in her pregnancy. In so doing, Client 1 authorized Midwife 1 to obtain her protected health information from Respondent.

43. Midwife 1 faxed Respondent two (2) separate authorizations to release Client 1’s records. Midwife 1 faxed Respondent these requests on October 3 and October 24, 2017. Respondent, however, failed to timely respond.

44. On October 30, 2017, twenty-seven (27) days after receiving the initial records request, Respondent faxed Client 1’s records to Midwife 1.

45. Respondent acknowledges that she transferred Client 1’s records twenty-seven (27) days after Midwife 1 requested them, however, she asserts that her actions were timely and reasonable.

Client 2

46. Sometime in or around April 2018, Midwife 1 began providing midwifery care for Client 2, who received midwifery care from Respondent earlier in her pregnancy. In so doing, Client 2 authorized Midwife 1 to obtain her protected health information from Respondent.

47. Midwife 1 sent Respondent four (4) separate requests for Client 2’s medical records. Respondent, however, failed to timely respond. Specifically, Respondent failed to respond to the following requests:

- a. On April 30, 2018, Midwife 1 faxed Respondent a request for Client 2’s records.
- b. On May 3, 2018, Midwife 1 faxed Respondent a second request for Client 2’s records.

- c. On May 16, 2018, Midwife 1 faxed Respondent a third request for Client 2's records.
- d. On May 24, 2018, Midwife 1 mailed Respondent a certified letter stating she had "requested records for [Client 2] 3 different times with no response." As a result, Midwife 1 stated she was sending Respondent the certified letter "to assure that you receive this request."

48. On June 15, 2018, Respondent finally transferred Client 2's records to Midwife 1.

In so doing, Respondent included a cover letter and stated, in pertinent part, as follows:

Please note, our fax services have been down off and on for some time now and we have had many issues sending and receiving all of our faxes. We did receive a fax from [Midwife 1's birth center] some time ago, but there was no attachment visible with the fax. A call to [Midwife 1's birth center] was made to inquire what the fax was about, but there was no information was given at that time as to the content of the fax. A certified letter requesting records for this patient was sent after not receiving them via fax. This letter was received and signed for by a tenant in our office, however, [Respondent] did not sign for this certified letter nor was passed on to the birth team until this week. Records were immediately retrieved from storage upon notification of this letter, and they are being sent today.

Client 3

49. In April 2018, Kimberly Palmer ("Midwife 2") began providing midwifery care for Client 3, who received midwifery care from Respondent earlier in her pregnancy. In so doing, Client 3 authorized Midwife 2 to obtain her protected health information from Respondent.

50. Midwife 2 sent Respondent three (3) separate requests for Client 3's medical records. Respondent, however, never responded or transferred Client 3's records. Specifically, Respondent failed to respond to the following requests:

- a. On April 3, 2018, Midwife 2 faxed Respondent a request for Client 3's records.
- b. On April 9, 2018, Midwife 2 faxed Respondent a second request for Client 3's records.

- c. On April 19, 2018, Midwife 2 faxed Respondent a third request for Client 3's records.

51. Respondent asserts that she has no record of receiving Midwife 2's requests for Client 3's records.

COUNT IV VIOLATIONS

52. All facts set forth in this Stipulation are incorporated into Count IV.

53. Respondent failed to transfer or failed to timely transfer requested medical records for at least three (3) clients after they began receiving midwifery care from other providers.

54. The allegations set forth in Count IV constitute a violation of the following laws, rules, and scope and practice standards governing the practice of midwifery in the State of Idaho:

- a. Idaho Code § 54-5510(6) (engaging in unprofessional conduct by violating Board rules and scope and practice standards); and Rule 450.01 (March 29, 2010) (stating that the Board may discipline a licensee for engaging in unprofessional conduct); Rule 450.01(h) (March 29, 2010) (stating that the Board may discipline a licensee for engaging in unprofessional conduct by violating Board rules, scope and practice standards, or record-keeping requirements); and Rule 356.01 (March 29, 2010) (requiring midwives to adhere to the NACPM Scope and Practice Standards).
- b. NACPM Scope and Practice Standard Five (stating that a midwife "makes records and other relevant information accessible and available at all times to the woman and other appropriate persons with the woman's knowledge and consent").

COUNT V

BACKGROUND

Respondent Failed to Recommend Required Physician Involvement to VBAC Clients

55. Respondent provided midwifery services to clients seeking vaginal births after a Cesarean-Section ("VBAC") without maintaining required documentation recommending the involvement of a physician during their pregnancies. Specifically:

- a. From approximately July through December 2016, Respondent provided midwifery care to J.B., who previously gave birth via Cesarean section. J.B.'s records indicate that her previous pregnancy was a breech C-section. Although Respondent had J.B. sign a VBAC informed consent form, the form did not advise her to see a physician.
- b. From approximately December 2016 through July 2017, Respondent provided midwifery care to A.C., who previously gave birth via Cesarean section. Although Respondent had A.C. sign a VBAC informed consent form, the form did not advise her to see a physician.
- c. From approximately February through April 2017, Respondent provided midwifery care to M.L., who previously gave birth via Cesarean section. Respondent's medical records for the mother do not contain any records from M.L.'s previous Cesarean birth. Additionally, although Respondent had M.L. sign a VBAC informed consent form, the form did not advise her to see a physician.
- d. From approximately February through September 2017, Respondent provided midwifery care to A.M., who previously gave birth via Cesarean section. Although Respondent had A.M. sign a VBAC informed consent form, the form did not advise her to see a physician.

COUNT V VIOLATIONS

56. All facts set forth in this Stipulation are incorporated into Count V.
57. Respondent provided midwifery care to at least four (4) VBAC clients without obtaining a signed acknowledgement certifying that she had advised each client to see a physician during their pregnancies.
58. The allegations set forth in Count V constitute a violation of the following laws, rules, and scope and practice standards governing the practice of midwifery in the State of Idaho:
 - a. Idaho Code § 54-5510(6) (engaging in unprofessional conduct by violating Board rules and scope and practice standards); and Rule 450.01(h) (March 29, 2010) (engaging in unprofessional conduct by violating Board rules or scope and practice standards).
 - b. Rule 356.04.b (March 29, 2010) (stating that "before providing care to a client with a history" of a "previous cesarean section," a "midwife must provide written notice to the client that the client is advised to see a physician . . . during the client's pregnancy" and that the midwife "must

obtain the client's signed acknowledgement that the client has received the written notice").

COUNT VI

BACKGROUND

Respondent Failed to Recommend Physician Involvement to a Client with a High BMI

59. Respondent provided midwifery services to a client with a pre-pregnancy body mass index ("BMI") of 37.2 without maintaining required documentation recommending the involvement of a physician during her pregnancy.

60. On April 25, 2016, A.W. visited Respondent for her first prenatal appointment. Respondent documented that A.W. was six (6)-foot, two (2)-inches and weighed 290 pounds prior to her pregnancy. This equates to a BMI of 37.2. During that same appointment, when A.W. was 10.6 weeks pregnant, Respondent documented that A.W. weighed 296 pounds, which equates to a BMI of 38.

COUNT VI VIOLATIONS

61. All facts set forth in this Stipulation are incorporated into Count VI.

62. Respondent provided midwifery care to at least one (1) client with a pre-pregnancy BMI of 37.2 without maintaining required documentation recommending the involvement of a physician during the pregnancy.

63. The allegations set forth in Count VI constitute a violation of the following laws, rules, and scope and practice standards governing the practice of midwifery in the State of Idaho:

- a. Idaho Code § 54-5510(6) (engaging in unprofessional conduct by violating Board rules and scope and practice standards); and Rule 450.01 (March 29, 2010) (stating that the Board may discipline a licensee for engaging in unprofessional conduct); Rule 450.01(h) (March 29, 2010) (stating that the Board may discipline a licensee for engaging in unprofessional conduct by violating Board rules or scope and practice standards).

- b. Rule 356.04.m (March 29, 2010) (stating that “before providing care to a client” with a BMI of at least thirty-five (35) but less than forty (40) at the time of conception, a “midwife must provide written notice to the client that the client is advised to see a physician . . . during the client’s pregnancy” and that the midwife “must obtain the client’s signed acknowledgement that the client has received the written notice”).

COUNT VII

BACKGROUND

Respondent Failed to Maintain Required Informed Consent Documentation

64. Respondent failed to maintain a signed record demonstrating that she provided adequate and required informed consent documentation to at least one (1) client, C.C.

COUNT VII VIOLATIONS

65. All facts set forth in this Stipulation are incorporated into Count VII.
66. The allegations set forth in Count VII constitute a violation of the following laws and rules governing the practice of midwifery in the State of Idaho:
 - a. Idaho Code §§ 54-5511(2) (requiring midwives to maintain a record of all signed informed consent agreements for each client for a minimum of nine years); 54-5510(6) (violate any standards of conduct as determined by the board in adopted rules); and
 - b. 325.02 (March 29, 2010) (requiring midwives to maintain a record of all signed informed consent agreements for each client for a minimum of nine years); and Rule 450.01(h) (March 29, 2010) (stating that the Board may discipline a licensee for engaging in unprofessional conduct by violating the Board’s record-keeping requirements and requirements for documenting informed consent).

COUNT VIII

BACKGROUND

Respondent Failed to Comply with the Board's Informed Consent Requirements

67. Idaho law requires licensed midwives to obtain and document informed consent from each client before initiating care. I.C. § 54-5511(1). The informed consent must be documented on an informed consent form, which must be "signed and dated by the client." *Id.*; and IDAPA 24.26.01.325.01 (March 29, 2010). Additionally, the informed consent form must provide each client with required information specified in the Board's laws and rules. *Id.*

68. From March 2016 through February 2017, Respondent failed to comply with the Board's informed consent or corresponding record-keeping requirements as it relates to at least six (6) clients by failing to ensure the clients correctly signed and/or dated the document

COUNT VIII VIOLATIONS

69. All facts set forth in this Stipulation are incorporated into Count VIII.

70. Respondent failed to fully-comply with the Board's informed consent or corresponding record-keeping requirements.

71. The allegations set forth in Count VIII constitute a violation of the following laws and rules governing the practice of midwifery in the State of Idaho:

- a. Idaho Code §§ 54-5511(1) (requiring midwives to obtain a signed informed consent agreement from each client before initiating care); 54-5511(2) (requiring midwives to maintain a record of all signed informed consent agreements for each client for a minimum of nine years); 54-5510(6) (stating that a midwife may not violate any standards of conduct as determined by the board in adopted rules); and
- b. Rule 325.01 (March 29, 2010) (requiring midwives to obtain a signed and dated informed consent agreement from each client before initiating care); Rule 325.02 (March 29, 2010) (requiring midwives to maintain a record of all signed informed consent agreements for a minimum of nine years); and Rule 450.01(h) (March 29, 2010) (stating that the Board may discipline a

licensee for engaging in unprofessional conduct by violating the Board's record-keeping requirements and requirements for documenting informed consent).

II.

WAIVER OF PROCEDURAL RIGHTS

In entering into this Stipulation and Consent Order ("Stipulation"), Respondent or Respondent's legally authorized representative acknowledges the following:

72. Respondent understands and admits the allegations pending before the Board as set forth in Section I of this Stipulation. Respondent further understands that these allegations constitute cause for disciplinary action upon her license to practice midwifery in Idaho.

73. Respondent understands that Respondent has the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to testify; the right to reconsideration of the Board's orders; the right to judicial review of the Board's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of midwifery in the State of Idaho. Respondent hereby freely and voluntarily waives these rights in order to enter into this Stipulation as a resolution of the pending allegations.

74. Respondent understands that in signing this Stipulation, Respondent is enabling the Board to impose disciplinary action upon Respondent's right to future licensure related to violation of this Stipulation without further process.

75. Respondent understands and agrees that Respondent may not withdraw or seek to rescind this Stipulation prior to the time the Board considers and acts upon it.

III.
STIPULATED DISCIPLINE

76. Respondent acknowledges and agrees to the following discipline imposed for the violations set forth herein, although not binding upon the Board until it issues an Order accepting this Stipulation.

Fine, Costs, and Fees

- a. Respondent shall pay to the Board a civil fine in the amount of \$3,000.00 within two (2) years of the entry of the Board's Order.
- b. Respondent shall pay investigative costs in the amount of \$6,375.00 and attorney fees in the amount of \$9,125.00 for a total amount of \$15,500.00 within two (2) years of the entry of the Board's Order. All funds paid by Respondent shall be applied towards the costs and attorney fees award first before application to the civil fine.
- c. Respondent shall timely pay all fines, costs, and attorney fees set forth in this Stipulation directly to the Board. Payments made via check or money order may be mailed to the following address: P.O. Box 83720, Boise, ID 83702-0063. Payments may be hand delivered to the following address: 11351 W. Chinden Blvd., Bldg. #6, Boise, ID 83714. Payments made via debit or credit card may be hand-delivered or made online at <https://dopl.idaho.gov/DOPLFinesAI>. Debit and credit card payments will not be accepted over the telephone.
- d. If Respondent fails to pay the civil fine, investigative costs, and attorney fees in accordance with the terms set forth in this Stipulation, Respondent shall be ineligible to renew License No. MID-33 or obtain any other license issued by the Board until such fines, costs, and attorney fees are paid in full to the Board.

Informed Consent Forms

- e. Within thirty (30) days of entry of the Board's Order, Respondent shall submit all of her informed consent documents to the Board for review and approval as to ensure they comply with the Board's laws and rules. Respondent may obtain such approval by contacting the Division of Occupational and Professional Licenses via email at inv@ibol.idaho.gov.¹

¹ Unless otherwise noted, for all terms set forth in this Stipulation requiring Board approval, Respondent may initiate the approval process by contacting the Division via email at inv@ibol.idaho.gov.

- f. Within sixty (60) days of the Board approving Respondent’s informed consent forms, Respondent shall provide proof to the Board’s satisfaction that she has provided her approved informed consent forms to all of her current clients.

Practice Guidelines

- g. Within thirty (30) days of entry of the Board’s Order, Respondent shall draft and submit to the Board for approval written practice guidelines specific to the practice of midwifery. In so doing, Respondent shall include no less than two (2) current references or current citations to professional or medical publications that have been published within the last five (5) years. After gaining Board approval, Respondent shall adhere to these practice guidelines in the practice of midwifery. These practice guidelines shall include the following conditions:
 - (1) Criteria for accepting and retaining clients;
 - (2) Supervisory role and responsibilities required of a midwife while supervising students, doulas, attendants, and other supportive personnel during the care-giving process. In so doing, Respondent shall clearly describe her supervisory role in managing and supervising the labor and delivery process while ensuring she and her supportive personnel are in full compliance with the Board’s laws and rules.

Agreements with Non-Licensed, Supportive Personnel Under Respondent’s Control

- h. Within thirty (30) days of entry of the Board’s Order, Respondent shall draft and submit to the Board for approval a written contract and/or agreement relating to her use of students and other non-licensed, supportive personnel in her midwifery practice during her probationary period.² These agreements must contain, at the very least, the following information:
 - (1) Clearly define the meaning of the word “supervision” as it relates to Respondent’s midwifery practice and provide examples of what constitutes both sufficient and insufficient supervision.
 - (2) Explain Respondent’s supervisory responsibilities in overseeing and/or working with non-licensed personnel;

² All provisions regarding Respondent’s use of students and other non-licensed, supportive personnel relate only to individuals who are employed by or contract with Respondent or are otherwise under Respondent’s supervision or control in her midwifery practice.

- (3) Provide a comprehensive list and/or detailed examples of the tasks and assistance non-licensed personnel (1) may provide under Respondent's supervision; (2) may provide without any supervision; and (3) may never provide regardless of Respondent's level of supervision.
 - (4) A statement that each non-licensed individual working with Respondent in her midwifery practice has a duty and shall promptly report to the Board (through the Division) any conduct that they reasonably believe violates the Board's laws, rules, or practice standards. The statement shall provide information as to how potential violations and misconduct may be reported to the Division.
 - (5) An acknowledgement of receipt that shall be executed by Respondent and each non-licensed individual working with Respondent in her midwifery practice certifying that they shall strictly comply with all terms set forth in the agreement.
- i. Upon receiving Board approval, Respondent shall promptly provide the approved agreement to each non-licensed, supportive personnel working with Respondent in her midwifery practice; verbally discuss each term of the agreement; and require that they sign, date, and agree to the agreement as a condition of providing continued assistance. Within thirty (30) days of the Board approving the agreement, Respondent shall provide to the Board executed copies of the agreement for each non-licensed, supportive personnel in her midwifery practice.
 - j. During her probationary period, Respondent shall not oversee, supervise, work with, or allow any non-licensed, supportive personnel to perform any task or assistance in her midwifery practice until Respondent has obtained a fully-executed copy of the Board-approved agreement from them. Respondent shall provide to the Board an executed copy of each agreement within thirty (30) days of execution.

Continuing Education

- k. Within one (1) year of the Board's Order accepting this Stipulation, Respondent shall successfully complete continuing education courses covering the following:
 - (1) Marching Orders: Developing Practical and Impactful Care Plans, provided by Gold Learning; and
 - (2) Defensive Charting, provided by Midwifery Wisdom School.

1. Within thirty (30) days of completing the foregoing education, Respondent shall submit proof to the Board's satisfaction establishing that she successfully completed the education requirements.

Documentation Consultant & Chart Review

- m. Within thirty (30) days of entry of the Board's Order, Respondent shall submit to the Board for approval the name, qualifications, and site of practice of one (1) or more proposed documentation consultant(s).
- n. Respondent shall retain a Board-approved documentation consultant and ensure that the following conditions are satisfied:
 - (1) The consultant shall be allowed unlimited access to all of Respondent's client charts and documentation for all patients from the last two (2) years.
 - (2) The consultant shall randomly select and review no less than twenty-five (25)-percent of all of Respondent's current client charts.
 - (3) Within sixty (60) days of the Board's approval of the consultant, Respondent shall ensure that the consultant submits a written report to the Board (i) discussing Respondent's compliance with the Board's laws, rules, and practice standards, and (ii) providing a description of Respondent's potential violations, if any, identified during the review. Respondent shall ensure that the consultant submits such a report every six (6) months, for a total of four (4) reports, during Respondent's probation. The first report shall be submitted to the Board no later than ninety (90) days of the Board's Order accepting this Stipulation.

Probation

- o. Respondent's midwifery license, MID-33, shall be placed on probation for a period of two (2) years. The conditions of probation are as follows:
 - (1) Respondent shall fully-comply with the terms of this Stipulation and timely and fully pay all of the fines, costs, and fees as set forth in this Stipulation.³
 - (2) Respondent shall comply with all state, federal, and local laws, rules, and regulations governing the practice of midwifery in the State of Idaho.

³ Respondent is required to pay the fines, costs, and attorney fees in accordance with the terms of the Stipulation. Respondent, however, is not required to comply with any of the other disciplinary terms set forth in this Stipulation while her license is inactive.

- (3) Respondent shall inform the Board in writing of any change of place of practice or place of business within fifteen (15) days of such change.
- (4) Respondent shall fully-cooperate with the Board and its agents, and shall make all relevant files, records, correspondence, or other documents available immediately upon the demand of any member of the Board and its agents.

Termination of Probation

- p. At the conclusion of the probationary period and, provided Respondent complies with all terms of this Stipulation, Respondent may request that the Board terminate the conditions of probation. Any termination request must be accompanied by written proof of compliance with the terms of this Stipulation, including the full payment of all fines, costs, and attorney fees. The Board retains discretion to reinstate Respondent's license or deny reinstatement and continue the period of probation.
- q. If requested by the Board or its agents, Respondent shall provide an executed release authorizing the Board and its agent to obtain any information, oral or written, as the Board may deem relevant to assist it in adequately reviewing Respondent's compliance with the terms of probation and this Stipulation.

Miscellaneous Provisions

- r. Respondent is solely responsible for all costs associated with complying with this Stipulation.
- s. Respondent's violation of any of the terms of this Stipulation may warrant further Board action. The Board, therefore, retains jurisdiction over this proceeding until all matters set forth in this Stipulation are resolved.

IV.

PRESENTATION OF STIPULATION TO BOARD

77. The Board's prosecutor shall present this Stipulation to the Board with a recommendation for approval.

78. The Board may accept, modify with Respondent's approval, or reject this Stipulation. If the Board rejects this Stipulation, an administrative Complaint may be filed against Respondent with the Board. In the event this Stipulation is rejected and an administrative

Complaint is filed, Respondent waives any potential right to challenge the Board's impartiality to hear the allegations in the Complaint based on the Board's consideration and rejection of this Stipulation. Respondent does not waive any other rights regarding challenges to Board members.

79. If the Board rejects this Stipulation, with the exception of Respondent's waiver set forth in the preceding paragraph, this Stipulation shall be regarded as null and void, and admissions in this Stipulation and negotiations preceding the signing of this Stipulation will not be admissible at any subsequent disciplinary hearing. Additionally, and with the exception of Respondent's waiver set forth in the preceding paragraph, this Stipulation shall not become effective until it has been approved by a majority of the Board and a Board member signs the attached Order.

V.

VIOLATION OF STIPULATION AND CONSENT ORDER

80. In the event Respondent violates or fails to timely comply with any term or condition of this Stipulation, the Board shall be authorized to take additional disciplinary action pursuant to the following procedures and without regard to any other requirement set forth in the Idaho Code, IDAPA rules, or any other statutory or regulatory provision:

- a. The Administrator of the Division of Occupational and Professional Licenses shall serve notice of the charges levied against Respondent to Respondent or Respondent's attorney, if any. Within twenty-one (21) days after the notice of the charges are served, Respondent may submit both a response (along with supporting documentation) to the allegations and specifically request a hearing before the Board. If Respondent does not submit a timely response, the alleged violations will be deemed admitted. If Respondent does not submit a timely and specific request for a hearing, Respondent waives any right to such hearing.

- b. At the hearing, if any, the Board and Respondent may submit evidence and present oral argument in support of their positions. Unless otherwise ordered by the Board, oral arguments and the evidentiary record before the Board shall be limited to evidence relevant to whether Respondent has violated this Stipulation. At the hearing, the facts and substantive matters related to the violations described in Section I of this Stipulation shall not be at issue.
- c. At the hearing, the Board may impose additional discipline, including, but not limited to, the suspension or revocation of Respondent's license, the imposition of fines, the recovery of costs and fees (including, but not limited to, attorney fees) incurred by the Board, and other conditions or limitations upon Respondent's practice.

81. This Stipulation and Consent Order is the resolution of a contested case and is a public record.

82. The Board shall be entitled to seek an injunction or order from the district court to enforce the provisions of this Stipulation without further administrative hearing in the event Respondent fails to comply with the terms of this Stipulation.

83. A faxed or scanned executed copy of this Stipulation shall be sufficient and the same as the original signed document.

84. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representations of any kind, verbal or otherwise.

VI.
ACKNOWLEDGMENT

I have read the attached Stipulation in its entirety and have had the opportunity to discuss it with legal counsel. I understand that, by its terms, I am waiving certain rights accorded me under Idaho law. I understand that the Board may approve this Stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this Stipulation according to the aforementioned terms, and I hereby agree to the above Stipulation for settlement. I understand that if the Board approves this Stipulation subject to changes, and the changes are acceptable to me, the Stipulation will take effect and an order modifying the terms of the Stipulation will be issued. If the changes are unacceptable to me or the Board rejects this Stipulation, it will be of no effect.

DATED this 14th day of October, 2021.

REDACTED

Sarah Marie Dunn
Respondent

I recommend that the Board enter an Order based upon this Stipulation.

DATED this 14th day of October, 2021.

NAYLOR & HALES, P.C.

REDACTED

By _____
Eric F. Nelson, Prosecutor
Idaho Board of Midwifery

ORDER

Pursuant to Idaho Code § 54-5504, the foregoing is adopted as the decision of the Idaho Board of Midwifery in this matter and shall be effective on the 29th day of October, 2021. IT IS SO ORDERED.

IDAHO BOARD OF MIDWIFERY

REDACTED

By _____
Board Chair

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of October, 2021, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Jennifer Hanway & Christopher Brown X U.S. Mail
Fisher Hudson Shallat _____ Certified Mail, Return Receipt Requested
REDACTED _____ Fax Transmission
REDACTED
Respondent's Attorneys

Eric F. Nelson _____ U.S. Mail
Naylor & Hales, P.C. _____ Hand Delivered
950 W. Bannock St., Ste. 610 X Email: eric@naylorhales.com
Boise, ID 83702 _____ Fax Transmission: 208-383-9516
Board Prosecutor

REDACTED

Marcie Rightnowar, Appeals/Hearings Coordinator
Division of Occupational and Professional Licenses