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Robert H. Corbin

January 12, 1990

Fran Roberts, M.S., R.N.
Executive Director
Arizona State Board of Nursing
2001 W. Camelback Road, Suite 350
Phoenix, Arizona 85015

Re: 190-008 (R89-023)

Dear Ms. Roberts:

You have inquired regarding the State Board of Nursing's disciplinary authority over an individual licensed by the Board to practice as a practical or professional nurse, or nurse practitioner, and also licensed by the Department of Health Services as a midwife. We have concluded that the Board possesses disciplinary authority over such an individual for unprofessional nursing conduct whether the conduct occurs in the course of nursing or midwife activities.

Authority for the Department of Health Services to regulate midwifery is found in Title 36, Chapter 6, Article 7 of the Arizona Revised Statutes. According to A.R.S. § 36-752(A):

A person attending women in childbirth shall be:

1. A qualified physician;
2. A registered nurse certified by the Arizona state board of nursing as a qualified nurse-midwife;^{1/}

^{1/} A registered nurse certified by the State Board of Nursing pursuant to A.A.C. R4-19-503(A) as a nurse midwife need not obtain a license from the Department of Health Services to practice midwifery; accordingly your inquiry does not concern the Board's regulation of Board-certified nurse-midwives.

3. Under the personal direction and supervision of a qualified physician; or,

4. A licensed midwife.

(Footnote added.)

An individual who wishes to obtain a license to practice midwifery must submit a written application for licensure to the Director of the Department of Health Services. A.R.S. § 36-753. By administrative rule, the Department has listed specific acts a midwife must perform in the course of attending a woman in childbirth. A.A.C. R9-16-205. A licensed midwife's violation of any of the statutes or administrative rules pertaining to the practice of midwifery is grounds for the Department to suspend or revoke his license. A.R.S. § 36-756.

The Nurse Practice Act, A.R.S. §§ 32-1601 to -1667, provides for the State Board of Nursing's regulation of practical nurses and registered and professional nurses. The Act establishes licensing requirements for each of these vocational classifications. It also directs the Board to take disciplinary action against nursing licentiates for engaging in unprofessional conduct as defined by either the Act or the Board's administrative rules, A.A.C. R4-19-101 to -505. A.R.S. § 32-1663.

The nature of a midwife's employment does not alter his duty to adhere to the statutes and rules governing licensed midwifery. Irrespective of the purpose for which the midwife's services are enlisted, if he engages in proscribed conduct, he may be subject to discipline by the Department of Health Services. Similarly, the purpose for which a licensed nurse is employed does not affect the Board's authority over the nurse. Whenever a licentiate engages in activities which would constitute unprofessional conduct, the Board may commence disciplinary action.

An individual who is licensed as both a nurse and a midwife at all times must adhere to the statutes and rules pertaining to both professions. Whether he intends to serve as a midwife or a nurse, if his conduct deviates from the legal standards of either profession, he is subject to discipline by the agency whose professional standards he has violated. Such a person may not escape discipline for violating the law governing one license by claiming to have been acting under authority solely of the other license.

We do not read the nursing and midwifery statutes as prescribing duties which are inconsistent with each other.

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Rather, we conclude that the nursing and midwifery statutes are complementary of, and not inconsistent with, each other. Furthermore, the legislature has evidenced no intent to preclude licensure in both professions at the same time. Therefore, the statutes should be construed so as to render them harmonious and consistent even if different portions seem to conflict. Cf. Adams Tree Service, Inc. v. Transamerica Title Insurance Co., 30 Ariz. App. 214, 511 P.2d 658 (1973). Consequently, we conclude that the lawful practice of midwifery does not, in and of itself, violate the the nursing statutes, nor does nursing, practiced lawfully, violate the midwifery statutes.

We therefore conclude that the Board possesses disciplinary authority over an individual licensed to practice as a practical or professional nurse, or nurse practitioner, and also licensed by the Department of Health Services as a midwife for unprofessional nursing conduct, whether the conduct occurs in the course of nursing or midwife activities.

Sincerely,



BOB CORBIN
Attorney General