

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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FILE COPY

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

CLEO MASON SMOOT, R.N.,  
RESPONDENT.

:  
:  
:  
:  
:

FINAL DECISION  
AND ORDER  
ORDER 0001417

The parties to this proceeding for the purposes of Wis. Stats.  
sec. 227.16 are:

Cleo Mason Smoot  
941 Gail Avenue  
Neenah, Wisconsin 54956

State of Wisconsin  
Board of Nursing  
1400 East Washington Avenue, Room 174  
P. O. Box 8936  
Madison, Wisconsin 53708

Department of Regulation & Licensing  
Division of Enforcement  
1400 East Washington Avenue, Room 183  
P. O. Box 8936  
Madison, Wisconsin 53708

A party aggrieved by this decision may petition the board for a rehearing within twenty (20) days after service of this decision pursuant to Wis. Stats. sec. 227.12. The party to be named as respondent in the petition is Cleo Mason Smoot.

A party aggrieved by this decision may also petition for judicial review by filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings will be held and serving the board and other parties with a copy of the petition for judicial review within thirty (30) days after service of this decision pursuant to Wis. Stats. sec. 227.16. The party to be named as respondent in the petition is the State of Wisconsin, Board of Nursing.

A complaint and notice of hearing were filed in the above-captioned matter on March 29, 1982. On November 18, 1982, the parties filed a Stipulation with the Board of Nursing executed by the respondent, Cleo Mason Smoot; by Michael H. Schaalman, attorney for Ms. Smoot; and by Steven M. Gloe, attorney for the complainant. A copy of the Stipulation is attached hereto and made a part hereof.



On November 19, 1982, the parties appeared before the Board of Nursing for the purpose of arguing in support of the Stipulation. Ms. Smoot appeared by herself and by her attorney, Michael H. Schaalman. Complainant appeared by Attorney Steven M. Gloe. Upon inquiry by the board following oral arguments, both parties agreed to a modification of paragraph 6.a. of the Stipulation to provide that respondent's current employment as an obstetrical nurse at St. Elizabeth's Hospital in Appleton, Wisconsin must be carried out in an inpatient setting.

Based upon the record in this case, including the Stipulation filed by the parties and the oral arguments of counsel in support of the Stipulation, the board hereby accepts the Stipulation as modified and, accordingly, makes the following Findings of Fact, Conclusions of Law and Order.

#### FINDINGS OF FACT

1. Cleo Mason Smoot, R.N. (respondent), residing at 941 Gail Avenue, Neenah, Wisconsin, was at all times relevant to the complaint filed herein duly licensed as a registered nurse in the State of Wisconsin (license No. 25544, issued on May 1, 1951).
2. At approximately 10:03 p.m. on the evening of June 28, 1980, Pierre Slightam, M.D. (Slightam), telephoned respondent and instructed her to go to the residence of Katherine Berkvam and John Corey in Appleton, Wisconsin to determine if Ms. Berkvam was in labor. Slightam was in Madison, Wisconsin at the time of this telephone call.
3. During this telephone call, Slightam provided respondent with the following information:
  - (a) Ms. Berkvam would be going to St. Mary's Hospital in Green Bay, Wisconsin for delivery; and
  - (b) Slightam would call the Berkvam/Corey residence in thirty or forty minutes to check on respondent's findings.
4. Prior to the telephone conversation referred to above, respondent had no prior knowledge of Ms. Berkvam's medical history.
5. Respondent had previously performed at-residence labor checks for Slightam. Slightam paid respondent on an hourly basis for these services.
6. Respondent arrived at the Berkvam/Corey residence at approximately 10:45 p.m.
7. Between 10:45 p.m. and 11:05 p.m., respondent examined Ms. Berkvam on two separate occasions. The first examination disclosed that Ms. Berkvam was dilated 4-5 cm., and that the baby was at about zero station. The second examination disclosed the additional facts that the baby was breech and passing meconium, and that Ms. Berkvam was dilated 10 cm.



8. At approximately 11:05 p.m., Slightam telephoned the Berkvam/Corey residence from a telephone in Madison, Wisconsin. Respondent spoke with Slightam and provided him with the following information:

- (a) Ms. Berkvam was fully dilated and ready to deliver;
- (b) The baby was breech; and
- (c) Respondent would handle the delivery on her own at the Berkvam/Corey residence.

9. At approximately 11:28 p.m., Slightam again telephoned the Berkvam/Corey residence from Madison, Wisconsin. Respondent at that time informed Slightam that in her opinion the labor seemed to be proceeding satisfactorily.

10. Shortly after the 11:28 p.m. telephone call, the baby (hereinafter Noah) delivered to the top of his head above the eyes.

11. Respondent then instructed Ms. Berkvam to position herself on her hands and knees in order to assist in the final delivery of her baby.

12. Respondent performed an episiotomy, which delivered the top of Noah's head shortly after midnight on the morning of June 29, 1980.

13. At all times during the course of the delivery, Noah appeared limp and grayish-white in color.

14. After Noah's head was delivered, Mr. Corey telephoned the paramedics at approximately 12:11 a.m.

15. At no time during the delivery of Noah did respondent seek, or instruct John Corey to seek, outside emergency medical assistance.

16. Noah died on June 30, 1980 at approximately 4:00 p.m.

#### CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this proceeding pursuant to Wis. Stats. sec. 441.07.

2. Respondent's failure to promptly institute emergency procedures in her management of the birthing process, as set forth above, constitute violations of Wis. Adm. Code sections N 11.03(1) and N 11.04(1), and Wis. Stats. sections 441.07(1)(c) and (d).



ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Cleo Mason Smoot to practice as a registered nurse in the State of Wisconsin shall be, and hereby is, limited for a period of two years as follows:

- (a) Respondent shall work in a board-approved employment setting during the period of license limitation. The parties agree that the respondent's current employment as an obstetrical nurse in an inpatient setting at St. Elizabeth's Hospital in Appleton, Wisconsin would provide respondent sufficient supervision to be an approved employment setting.
- (b) In the event respondent wishes to work in a different employment setting, respondent shall petition the board in writing and provide any information on the proposed setting that the board may require. The board may permit respondent to work in different work settings upon such terms and conditions as the board may deem appropriate.

Dated at Madison, Wisconsin this 3rd day of December, 1982.

Marjorie Lundquist RN



STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST :

STIPULATION

CLEO MASON SMOOT, R.N., :  
RESPONDENT. :

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It is hereby stipulated between Cleo Mason Smoot, R.N., personally and by her attorney Michael H. Schaalman, and Steven M. Gloe, attorney for the Department of Regulation & Licensing, Division of Enforcement, as follows that:

1. This Stipulation shall be submitted to the Board of Nursing to form the basis for the Final Decision and Order in this matter.

2. The parties reserve the right to appear before the Board of Nursing to present arguments based upon the findings agreed upon pursuant to this Stipulation, and in favor of adoption of the Stipulation. The parties therefore request the Board to set aside a time and date for their appearance.

3. If the Board accepts the terms of the Stipulation, the parties consent to the issuance of a Final Decision and Order by the Board without further notice, pleading, appearance or consent of the parties.

4. If the terms of the Stipulation are not acceptable to the board, the parties shall not be bound by the contents of the Stipulation, and the matter shall be returned to the hearing examiner for further proceedings.

5. In settlement of this matter, the Respondent agrees to neither admit nor deny the following allegations, thereby allowing the Board to make Findings of Fact consistent with these allegations.

- a. Cleo Mason Smoot, R.N. was at all times relevant herein duly licensed as a registered nurse in the State of Wisconsin (license #25544; issued on May 1, 1951).
- b. At approximately 10:03 p.m. on the evening of June 28, 1980, Pierre Slightam, M.D. (hereinafter Slightam) telephoned Respondent and instructed her to go to the residence of Katherine Berkvam and John Corey in Appleton, Wisconsin to determine if Ms. Berkvam was in labor. Slightam was in Madison, Wisconsin, at the time of this telephone call.
- c. During this telephone call, Slightam provided Respondent with the following information:
  - i) Ms. Berkvam would be going to St. Mary's Hospital in Green Bay, Wisconsin for delivery; and
  - ii) Slightam would call the Berkvam/Corey residence in 30 or 40 minutes to check on Respondent's findings.



- d. Prior to the telephone conversation referred to above, Respondent had no prior knowledge of Ms. Berkvam's medical history.
- e. Respondent had previously performed at residence labor checks for Slightam; Slightam paid Respondent on an hourly basis for these services.
- f. Respondent arrived at the Berkvam/Corey residence at approximately 10:45 p.m.
- g. Between 10:45 p.m. and 11:05 p.m., Respondent examined Ms. Berkvam on two separate occasions. The first examination disclosed that Ms. Berkvam was dilated 4-5 cm., and that the baby was at about zero station. The second examination disclosed the additional facts that the baby was breech and passing meconium, and that Ms. Berkvam was dilated 10 cm.
- h. At approximately 11:05 p.m., Slightam telephoned the Berkvam/Corey residence from a telephone in Madison, Wisconsin. Respondent spoke with Slightam and provided him with the following information:
  - i) Ms. Berkvam was fully dilated and ready to deliver;
  - ii) The baby was breech; and
  - iii) Respondent would handle the delivery on her own at the Berkvam/Corey residence.
- i. At approximately 11:28 p.m., Slightam again telephoned the Berkvam/Corey residence from Madison, Wisconsin. Respondent at that time informed Slightam that in her opinion the labor seemed to be proceeding satisfactorily.
- j. Shortly after the 11:28 p.m. telephone call, the baby (hereinafter Noah) delivered to the top of his head above the eyes.
- k. Respondent then instructed Ms. Berkvam to position herself on her hands and knees in order to assist in the final delivery of her baby.
- l. Respondent performed an episiotomy, which delivered the top of Noah's head shortly after midnight on the morning of June 29, 1980.
- m. At all times during the course of the delivery, Noah appeared limp and greyish white in color.
- n. After Noah's head was delivered, Mr. Corey telephoned the paramedics at approximately 12:11 a.m.
- o. At no time during the delivery of Noah did Respondent seek, or instruct John Corey to seek, outside emergency medical assistance.
- p. Noah died on June 30, 1980 at approximately 4:00 p.m.



4. Respondent further agrees to neither admit nor deny that, by the conduct described above, she is subject to disciplinary action under Wis. Stats. sec. 441.07(1)(c) and (d) and Wis. Adm. Code secs. N 11.03(1) and 11.04(1) for her failure to promptly institute emergency procedures in her management of the birthing process.

5. Respondent understands that the practice of nurse midwifery in Wisconsin requires separate certification under Wis. Stats. 441.15(2).

6. The parties further agree to recommend that as discipline in this matter the license of Respondent Cleo Mason Smoot, R.N. be limited for a period of two years as follows:

- a. Respondent shall work in a Board approved employment setting during the period of license limitation. The parties agree that the Respondent's current employment as an obstetrical nurse at St. Elizabeth's Hospital in Appleton, Wisconsin would provide Respondent sufficient supervision to be an approved employment setting.
- b. In the event Respondent wishes to work in a different employment setting, Respondent shall petition the Board in writing and provide any information on the proposed setting that the Board may require. The Board may permit Respondent to work in different work settings upon such terms and conditions as the Board may deem appropriate.

Failure to comply with the terms of this Order may result in further disciplinary action.

11/8/82  
Date

Cleo Mason Smoot RN  
Cleo Mason Smoot, R.N., Respondent

11/17/82  
Date

Michael H. Schaalman  
Michael H. Schaalman  
Attorney for Respondent

11/18/82  
Date

Steven M. Gloe  
Steven M. Gloe, Attorney  
Division of Enforcement

SMG:bdk  
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