

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



### Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

#### Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscga>

- Records not open to public inspection by statute are not contained on this website.

**By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.**

**Correcting information on the DSPS website:** An individual who believes that information on the website is inaccurate may contact [DSPS@wisconsin.gov](mailto:DSPS@wisconsin.gov)



Before The  
State of Wisconsin  
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

---

In the Matter of a Petition for an Administrative  
Injunction Involving Dawn Petras, Respondent

FINAL DECISION AND ORDER

Order No. 0005494

---

**Division of Legal Services and Compliance Case No. 16 UNL 093**


The State of Wisconsin, Department of Safety and Professional Services, having considered the above-captioned matter and having reviewed the record and the Proposed Decision and Order Granting Summary Judgment of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision and Order Granting Summary Judgment annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Safety and Professional Services.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 3rd day of November, 2017.

  
Aloysius Rohmeyer  
Interim Chief Legal Counsel  
Department of Safety and Professional Services



Before The  
State of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

---

In the Matter of a Petition for an Administrative  
Injunction Involving Dawn Petras, Respondent

DHA Case No. SPS-17-0013  
DLSC Case No. 16 UNL 093

---

**PROPOSED DECISION AND ORDER GRANTING SUMMARY JUDGMENT**

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Dawn Petras, by:

Dawn Petras  
112 West Brown Street  
Augusta, WI 54722

Department of Safety and Professional Services, Division of Legal Services and  
Compliance, by

Attorney Sandra L. Nowack  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 8935  
Madison, WI 53708-8935

PROCEDURAL HISTORY

The above-captioned matter is before this tribunal on a motion for summary judgment filed by the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), pursuant to a prehearing conference held on July 17, 2017 and a Briefing Order issued that same date. Respondent Dawn Petras (Respondent) did not file a response to the motion for summary judgment as required by a July 17, 2017 Briefing Order. For the reasons set forth below, the Division's motion for summary judgment is granted.

FINDINGS OF FACT

The Findings of Fact set forth below are adopted from the parties' August 24, 2017 Stipulation. (Ex. A, attached to Division's Memorandum in Support of Motion for Summary Judgment) Although some of the parties' stipulations are not germane to this tribunal's ultimate

legal conclusions, and other stipulations recite statutory standards, all but one<sup>1</sup> of the parties' stipulations are included here, as one or both parties evidently believed them to be significant to their positions.

1. Respondent Dawn Petras is not now and has never been licensed by the State of Wisconsin as a midwife or a certified nurse-midwife. She does not now, and has never, held a temporary permit to practice midwifery in Wisconsin.

2. Respondent's most recent address is 112 W. Brown Street, August, Wisconsin 54722.

3. Respondent has never applied for Wisconsin licensure as a midwife or certified nurse-midwife.

4. Respondent has never applied for a Wisconsin temporary permit to act as a midwife in training.

5. The phrase "a license to engage in the practice of midwifery in the State of Wisconsin" and the word "license" mean a license to practice as a midwife, a license to practice as a certified nurse midwife or a temporary permit to act as a midwife in training.<sup>2</sup>

6. Since at least January of 2016, Respondent has provided maternity care to women in Wisconsin during the antepartum, intrapartum, and postpartum periods.

7. Since at least January of 2016, Respondent has engaged in the unlicensed practice of midwifery in Wisconsin.

8. On Monday, July 17, 2017, during a prehearing conference Respondent admitted that she had engaged in the unlicensed practice of midwifery in Wisconsin.

9. Wisconsin Stat. § 440.9805(3) defines the practice of midwifery to mean "providing maternity care during the antepartum, intrapartum, and postpartum periods."

10. Between at least January 2016 and June 2016, Respondent engaged in the practice of midwifery without a license in Wisconsin, in violation of Wis. Stat. § 440.982(1).

11. Pursuant to Wis. Stat. § 440.981(1m), the credentialing process in Wisconsin provides two paths to licensure. The candidate may have been certified as a professional midwife (CP) through the North American Registry of Midwives (NARM). Wis. Stat. § 480.982(1m)(c)1. Alternatively, the candidate may have been certified by the American College of Nurse Midwives (ACNM) as a nurse-midwife. Wis. Stat. § 480.982(1m)(c)2.

---

<sup>1</sup> The parties stipulated that "[t]here is no constitutional right to freedom of worship and liberty of expression that would exempt Respondent from Wisconsin's requirement that midwives be credentialed." (Ex. A, ¶ 17) Because this statement is a legal conclusion adopted by the parties and not necessarily by this tribunal, and resolution of this legal issue is unnecessary to a decision in this matter, this legal assertion has not been adopted as a finding of fact in this matter.

<sup>2</sup> See Wis. Stat. § 440.982(1).

12. Respondent does not currently meet, and has never met, the requirements of NARM or ACNM certification, and therefore does not meet the requirements for licensure to engage in the practice of midwifery in Wisconsin.

13. Respondent opposes the requirements for licensure in Wisconsin because she believes the requirements unfairly give inadequate recognition of the competence of experienced midwives who are not certified by NARM or ACNM.

14. On June 23, 2016, Respondent filed with the Division a complaint, No. 16 UNL 096, alleging that Mattie Stutzman, a member of an Amish community, engaged in midwifery practices Respondent believed were dangerous and incompetent.

15. Mrs. Stutzman does not currently meet, and has never met, the requirements for NARM or ACNM certification, and therefore does not meet the requirements for a license to engage in the practice of midwifery in Wisconsin.

16. On March 9, 2017, the Department issued Mrs. Stutzman an Administrative Injunction, Order No. 5203, enjoining her from the unlicensed practice of midwifery in the State of Wisconsin and from holding herself out as a licensed midwife.

17. Respondent asserts that the State of Wisconsin allows unlicensed midwives who practice in underserved rural areas to register with the Department of Health Services authorizing them to submit paperwork that is the basis upon which the Office of Vital Records issues birth certificates.

18. Respondent asserts that the State of Wisconsin allows unlicensed midwives who practice in underserved rural areas to register with the State Lab of Hygiene for the purpose of submitting infant blood work for screening.

19. Respondent contends that because the State of Wisconsin allows unlicensed midwives to register with the State and assists them in practice, the State supports the unlicensed practice of midwifery. Therefore, if the State of Wisconsin enjoins Respondent from the unlicensed practice of midwifery, and not all others, Respondent contends that the State would violate Respondent's 14<sup>th</sup> Amendment right to "equal rights and protection under the law."

## DISCUSSION

### Standards Governing Summary Judgment

"The summary judgment procedure as provided in s. 802.08, Stats., shall be available to the parties upon approval by the division or the administrative law judge." Wis. Admin. Code § HA 1.10(2).

Pursuant to Wis. Stat. § 802.08, summary judgment "shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Wis. Stat. § 802.08(2). "When a motion for summary judgment is made and supported as provided in this section [§ 802.08], an adverse party may not

rest upon the mere allegations or denials of the pleadings but the adverse party's response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue for trial." Wis. Stat. § 802.08(3). "If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against such party." *Id.*

"A motion for summary judgment may be made on the basis of the pleadings or other portions of the record in the case or it may be supported by affidavits and a variety of outside material." *Tews v. NHI, LLC*, 2010 WI 137, ¶ 49, 330 Wis. 2d 389, 793 N.W.2d 860 (citation omitted). On a motion for summary judgment, the facts are construed in favor of the non-moving party. *DeHart v. Wis. Mut. Ins. Co.*, 2007 WI 91, ¶ 7, 302 Wis. 2d 564, 734 N.W.2d 394. "[I]f there are any material facts in dispute or any reasonable inferences that might be drawn from undisputed facts which point to a result contrary to the one sought by the movant, the motion must be denied." *Peninsular Carpets, Inc. v. Bradley Homes, Inc.*, 58 Wis. 2d 405, 410, 206 N.W.2d 408 (1973). However, "when the facts are not in dispute and the legal issues are capable of resolution, summary judgment is mandatory." *Smith v. State Farm Fire & Cas. Co.*, 127 Wis. 2d 298, 301, 380 N.W.2d 372 (Ct. App. 1985).

#### Violation of Wis. Stat. § 440.982(1)

Pursuant to Wis. Stat. § 440.982(1), "No person may engage in the practice of midwifery unless the person is granted a license under this subchapter [Subchapter XIII], is granted a temporary permit pursuant to a rule promulgated under s. 440.984 (2m), or is licensed as a nurse-midwife under s. 441.15."

Respondent concedes that she has never been licensed by the State of Wisconsin as a midwife or nurse-midwife and has never held a temporary permit to practice midwifery in Wisconsin. Respondent also admits that since at least January of 2016, Respondent has engaged in the unlicensed practice of midwifery in the State of Wisconsin and has "provided maternity care to women in Wisconsin during the antepartum, intrapartum and postpartum periods." Finally, Respondent concedes that in practicing midwifery without a license, she violated Wis. Stat. § 440.982(1).

Respondent's admissions are consistent with state statutes. Under Wis. Stat. § 440.9805(3), the "practice of midwifery" means "providing maternity care during the antepartum, intrapartum, and postpartum periods." Pursuant to Wis. Stat. § 440.9805(2), a "licensed midwife" means "a person who has been granted a license under this subchapter to engage in the practice of midwifery." Thus, the undisputed material facts establish that Respondent violated Wis. Stat. § 440.982(1) by engaging in the practice of midwifery without a license.

Respondent's reasons for challenging the Department's proposed action are unclear. Respondent has failed to submit a response to the Division's motion for summary judgment, despite a July 17, 2017 Briefing Order setting a deadline of September 29, 2017 for Respondent to do so. However, in the parties' Stipulation, adopted as Findings of Fact in this case, and in Respondent's July 7, 2017 response to the Division's Petition for an Administrative Injunction, Respondent suggests that the statute requiring licensure, Wis. Stat. § 440.982(1), may not be enforced against her. She asserts that the State of Wisconsin encourages people in underserved rural areas to practice midwifery without a license, yet she offers no evidence supporting this

argument, nor does she state why any such “encouragement” would trump a statute clearly prohibiting such conduct. She also suggests in her response to the Division’s petition that the State has allowed an individual by the name of Mattie Stutzman (and possibly others) to practice midwifery without a license and that therefore seeking to enjoin Respondent from similarly practicing without a license violates her constitutional rights to equal protection. Respondent’s assertion with regard to Mrs. Stutzman is not only unsupported but is also clearly negated by the Department’s March 9, 2017, Administrative Injunction enjoining Mrs. Stutzman from the unlicensed practice of midwifery and from holding herself out as a licensed midwife. Moreover, as previously stated, Respondent has not provided any convincing evidence or argument for the assertion that the State encourages the unlicensed practice of midwifery or that any such encouragement would override the prohibition against practicing midwifery without a license set forth in Wis. Stat. § 440.982(1).

Based on the foregoing, the Division is entitled to summary judgment on the issue of whether Respondent violated Wis. Stat. § 440.982(1).

#### Administrative Injunction

The Division seeks to enjoin Respondent from practicing midwifery without a license pursuant to Wis. Stat. § 440.21(2). This provision states that if the Department “determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, [it] may issue a special order enjoining the person from the continuation of the practice or use of the title.” Wis. Stat. § 440.21(2).

As stated, Respondent admits that she does not have a license to practice midwifery in Wisconsin and that she practiced midwifery in Wisconsin while unlicensed, in violation of Wis. Stat. § 440.092(1). She also concedes that she does not have the qualifications necessary for licensure in Wisconsin. Respondent has clearly violated Wis. Stat. § 440.982(1) and has not made any cogent argument in response to the Division’s motion for summary judgment as to why she should not be enjoined from violating Wis. Stat. § 440.982(1). Because practicing midwifery in Wisconsin without a license is forbidden under Wis. Stat. § 440.982(1), as a matter of law, Respondent must be enjoined from continuing to practice midwifery in Wisconsin without a license. Therefore, the Division is granted summary judgment on its request for an administrative injunction.

#### CONCLUSIONS OF LAW

1. The undisputed facts establish as a matter of law that Respondent violated Wis. Stat. § 440.982(1).
2. The undisputed facts establish as a matter of law that Respondent should be enjoined from practicing midwifery in the State of Wisconsin without a license, pursuant to Wis. Stat. §§ 440.21(2) and 440.982(1).

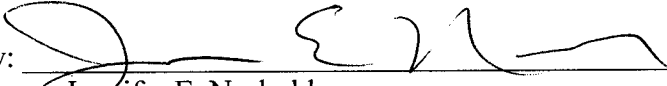
#### ORDER

For the reasons set forth above, IT IS ORDERED that Respondent is enjoined from the unlicensed practice of midwifery in the State of Wisconsin and from holding herself out as a

midwife in the State of Wisconsin, effective the date the Final Decision and Order in this matter is signed by the Department.

Dated at Madison, Wisconsin on October 19, 2017.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

By:   
Jennifer E. Nashold  
Administrative Law Judge