

**STATE OF VERMONT  
SECRETARY OF STATE  
OFFICE OF PROFESSIONAL REGULATION  
NATUROPATHIC PHYSICIANS**

In re: ANGELA J. ROBENS }  
License No. 099.0071198 } Docket No. 2015-318  
}

**DECISION ON REQUEST FOR  
SUMMARY SUSPENSION ORDER**

Appearances:

Prosecuting the case: Elizabeth Jarvis, Esq.  
Respondent: *pro se*

Administrative Law Officer: George K. Belcher

Exhibits introduced and admitted:

State Ex. 1: Letter of Dr. Harry Chen to Office of Professional Regulation  
State Ex. 2: Parent's Worksheet for Child's Birth Certificate  
State Ex. 3: Chart-notes 12/2/14-5/19/15  
State Ex. 4: Group B Strep Informed Consent form (unsigned)  
State Ex. 5: Labor Summary  
State Ex. 6: Final Report of Autopsy  
State Ex. 7: Midwifery Informed Consent

Respondent's Ex. A: Letter from Respondent to Jeffrey Jones, August 12, 2015  
Respondent's Ex. B: Emergency Transport Plan form (unsigned)

**Summary Suspension Order  
FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

This matter came before the Administrative Law Officer on a Request for a Summary Suspension. The hearing was held on August 19, 2015 at the Office of Professional Regulation Conference Room at the City Center in Montpelier, Vermont. The Respondent appeared without counsel. The Board has authority to summarily suspend a license pending further action, if it determines that public health, safety, or welfare imperatively requires emergency action. 3 V.S.A. § 814(c).

**Findings of Fact**

Based on a review of the pleadings and on the evidence presented at the hearing, the Administrative Law Officer finds:

1. Respondent is a licensed Naturopathic Physician and is therefore subject to the regulatory

authority of this Board. 3 V.S.A. §§ 129, 129a, 814(c) , and 26 V.S.A. Chapter 81, the Administrative Rules for Naturopathic Physicians, and the Rules of the Office of Professional Regulation. 3 V.S.A. § 814(c) permits the Board to summarily suspend a license if it finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order.

2. The prosecutor has filed a “Request for Summary Suspension.” A copy of the Request is attached to this Decision and Order. The Request alleges that the Respondent failed to practice competently (3 VSA Sec. 129a(b) (1) and (2)), failed to comply with the provisions of State statutes or rules (3 VSA Sec. 129a(a)(3), failed to exercise independent judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession(3 VSA Sec. 129a(a)(15); and violated the Vermont Rules for Naturopathic Physicians, Rule 3.8.
3. The Request for Summary Suspension further alleges that the public health, safety or welfare imperatively requires emergency action.
4. Notice of this hearing was sent to Respondent at her last known address via certified mail dated August 11, 2105. She received notice of the hearing on August 17, 2015.
5. It is further found that the Respondent is licensed as a Naturopathic Physician and also carries a Naturopathic Childbirth Endorsement to her license. As such, she engages in assisting clients with naturopathic childbirth. This practice is a minor part of her practice. She also conducts a naturopathic practice for illness prevention and for chronic conditions of her clients. She has approximately seven (7) years of practice, of which five (5) years has been in the State of Vermont. Her practice is under the name of Stowe Natural Family Wellness.
6. The Respondent provided prenatal care to her client, C.S., commencing in late 2014. C.S. was a prior client of the Respondent and this was not the first pregnancy, nor the first home birth for the client.
7. The rules for naturopathic childbirth are quite specific concerning the documentation which must precede the client/Naturopath relationship:

Rule 3.8 INFORMED CONSENT FOR NATUROPATHIC CHILDBIRTH

- (A) Before accepting a client for prenatal and natural childbirth, the naturopathic physician must first obtain a written informed consent. Informed consent must be shown in a written statement and signed by the ND [Naturopathic Doctor] and the client to whom care is to be given, in which the ND certifies that full disclosure has been made and acknowledged by the client of the following:
    1. The Naturopathic physician’s credentials.
    2. A copy of the written plan for consultation, emergency transfer, and transport.
    3. A description of the procedures, benefits, and risks of home birth.
  - (B) The informed consent form must be filed in the client’s chart, and a copy must be provided to the client.
8. A “Midwifery Informed Consent” form was signed by the client on January 6, 2015 (See State’s Ex. 7). The informed consent form was not signed by the Respondent as required by the rule. Also, the informed consent form was signed by the client approximately a month after what was probably the initial visit by the Respondent to the client on December 2, 20014, rather than being signed “before accepting a client for prenatal and natural childbirth.” (See State Ex. 3)

9. There was also no written plan for consultation, emergency transfer, and transport. While the informed consent document did state, "My midwife informed me during the consultation visits of potential medical complications that require referral" this is not a written plan for consultation, emergency transfer, and transport.
10. Doctor Robens did give the client a form entitled "Emergency Transport Plan". (Respondent Ex. 2) Although this document has a place for the client's signature, there was no signed copy of the transport plan in the client's file. Moreover, Dr. Robens testified that the transport plan form was given to the client so that it could be filled in and placed on the refrigerator in the home of the client so as to be available in the event of emergencies. Since Doctor Robens did not have a completed and signed emergency transfer plan in the client's file, it is unlikely that a completed, written plan was ever made and signed by the client as required by the rule.
11. Group B streptococcus (GBS) is a bacteria which can be passed from pregnant women to the baby during delivery. According to Dr. Robens' GBS informed consent form (State Ex. 4), about half of children born to mothers who have GBS infections are themselves infected. "The majority of GBS colonized infants (98%) do not have symptoms. However, about 2% will develop early GBS infection. GBS infection can cause inflammation of the baby's blood, lungs, brain, and/or spinal cord. This can cause sepsis, pneumonia, and meningitis. GBS infection causes death in about 5-6% of affected newborns." (See State Ex. 4) According to the Vermont Health Commissioner, GBS is the leading cause of infectious mortality and morbidity among newborns in the United States. (See State Ex. 1)
12. On May 12, 2015 Dr. Robens discussed with the client the issue of a GBS screening test and the client orally agreed to the test according to a chart-note. (See State Ex. 3) The "Group B Strep Informed Consent" form (State Ex. 4) has a place for the signature of the client but no signature appears to have been secured.
13. According to Dr. Robens, a GBS screen is more effective if given closer to the time of birth. She stated that the range of gestational age at which the GBS screen should be taken is between 35 to 37 weeks. She likes to administer the screen during the 36<sup>th</sup> week and she was planning to do so in this case. The membrane of the client broke on May 18, 2015 at 11:00 P.M. (State Ex. 5). The gestational age of the child at this time was 36 weeks plus 4 or 5 days. No GBS screen had been performed before labor began. Dr. Robens did not believe that a "swab" or test for GBS, with lab results, would be complete before delivery and so none was done after membranes ruptured. The labor progressed and the child was born on May 20, 2015 at 3:19 AM.
14. No GBS test was performed and the GBS status of the mother was unknown during labor and at the time of birth. (State Ex. 2) It was the responsibility of the Respondent to determine whether the administration of a prophylactic dose of antibiotics could or should have been given. According to Dr. Chen, a prophylactic dose of antibiotics should have been administered intravenously to the mother. (See State Ex. 1) Dr. Chen's opinion is based upon the document, "Prevention of Early-Onset Group B Streptococcal Disease in Newborns" published in 2011 and reaffirmed in 2013 by the American College of Obstetrics and Gynecology. That document recommends prophylactic administration of antibiotics if the GBS status of the mother is unknown under four conditions: (1) delivery at less than 37 weeks gestation; (2) amniotic membrane rupture greater or equal to 18 hours; (3) intrapartum temperature greater than 100.4 degrees; (4)

- intrapartum NAAT positive for GBS. In this case the delivery was at 36 weeks, 5 days (condition #1). The amniotic membrane rupture was 28 hours before the birth (condition #2). (State Exs. 2 and 3)
15. Dr. Robens testified that the community of providers for out-of-hospital births (midwives and naturopathic physicians with childbirth endorsement) have a differing standard of care for unknown GBS status administration of prophylactic antibiotics from the standards of in-hospital births. According to her, if GBS status is unknown at the time of membrane rupture, the mother is "... monitored for signs of infection within the stated time frames and transferred to a hospital facility for IV antibiotics if any develop..." (Respondent's Ex. A) The authority for her testimony on this point was her "discussions" with other out-of-hospital providers. She offered no other authority for this position. This is "out of hospital community standard of care" offered by Dr. Robens is contrary to Dr. Chen's statement of authority.
  16. After the birth of the child, the child developed acute respiratory distress and died seven hours after birth from Pneumonia/Sepsis due to Streptococcus, Beta Hemolytic Group B. The date of death was May 20, 2015, seven hours after birth. (See State Ex. 6)
  17. Dr. Robens stated that it was not within the scope of practice for a naturopath physician to administer IV antibiotics for prolonged rupture of membranes. (Respondent Ex. A) The Vermont Naturopathic Physician Formulary (Revised 5/30/12) states that no agent may be administered intravenously by a naturopathic physician unless specifically authorized; antibiotics are not so authorized in the formulary. The Administrative Rules for Naturopathic Physicians call for a transfer of the client to a hospital for premature rupture of membranes at 37 weeks or less with a positive GBS, but the rules do not address this situation when GBS status is unknown. (See Administrative Rules for Naturopathic Physicians, Rule 3.10(c)(9)) Moreover, Dr. Robens stated that "It is a rare home birth client who would choose to go to the hospital to receive IV antibiotics, yet they would be more likely to agree to this prophylactic intervention if it were offered in their home." (See Respondent's Ex. A) It is unclear whether a naturopathic physician assisting with a home birth could seek a consult with a medical physician to administer the IV antibiotic in the home. There was no evidence offered by the Respondent, nor does it appear in the client's chart, that a possible prophylactic IV antibiotic dose, a consult for IV antibiotic, or a possible hospital transfer for IV antibiotic was discussed or offered to the client.

### **CONCLUSIONS OF LAW**

18. The State has the burden of proof to establish by a preponderance of the evidence that the public health, safety or welfare are at risk and that the proven risk to the public imperatively require emergency action. See 3 VSA Sec. 814(c).
19. In this case the State has adequately proven that the Respondent failed to comply with several items of specific documentation as required of those naturopathic physicians doing naturopathic childbirth. See Findings 7-10.
20. The State has also adequately proven that the failure to administer prophylactic antibiotics, or at least to offer the same, was a breach of the standard of care required of a naturopathic physician who is providing the care for mother and newborn. Findings 11-15.

21. The Respondent argued that if emergency action is deemed necessary that only her Naturopathic Childbirth endorsement should be restricted. She testified that she had no prior disciplinary matters or adverse outcomes and that she had modified her practices in childbirth cases concerning transfer of cases. (See Respondent Ex. A, Page 2)
22. The State argues that the multiple failures to properly document things as required by the rules and the breach of the standard of care justify a summary license suspension of Dr. Robens entire naturopathic license. It was argued that the Respondent's lapses which were proven may be indicative of other lapses in her practice outside of the childbirth area.
23. The applicable law in this area was discussed in the case of In re Mitchell R. Miller, MD, 2009 VT 112, 989 A.2d 982 (Vt. 2009). In that case the court recognized the important property right which attaches to a professional license and that due process procedural protections apply to actions to restrict a professional's license. The case further recognized that a summary suspension in exigent circumstances is appropriate where there is a risk to the public and where a meaningful review of the deprivation can occur in a timely manner. Id. at p. 989. In Dr. Robens case, she was alerted to the investigation into her license when she first met with the Department investigator, Jeffrey Jones on August 4, 2015. She appeared at the hearing and was heard; she submitted evidence in her defense.
24. The Miller case also addressed the issue of the appropriate remedy under 3 VSA Sec. 814(c). In footnote #6 of the decision the court reviewed 3 VSA Sec. 129(a)(3) and its history. The court stated,

The statute was amended in 2007, however, to insert the word "suspend" after "immediately" [citation omitted] which would appear to support the State's position that the Legislature intended to confine the Board's emergency authority to the power to suspend.

25. In Dr. Robens case, however, the Administrative Rules for Naturopathic Physicians contains a provision which would allow a selective focus on the childbirth practice. Rule 3.7(g) provides:

Licensing or disciplinary action by an Administrative Law Officer or judicial authority shall be deemed to have an equal effect upon a special endorsement to practice naturopathic childbirth issued to a licensee, unless specifically provided otherwise in the licensing or disciplinary action. When the subject of a licensing or disciplinary proceeding relates specifically to the practice of naturopathic childbirth by a licensee who possesses a special endorsement, the licensing or disciplinary action may, instead of affecting the entire scope of the licensee's practice, suspend, revoke or condition or restrict only the licensee's authority under the special endorsement.

26. Clearly, the rule would allow summary suspension of the naturopathic childbirth endorsement alone without a summary suspension of the Respondent's entire license. It makes sense under the principles of due process that a summary suspension should be limited in scope to the narrowest action which will protect the public.
27. None of the violations of the rules or the standards by the Respondent which have been proven were outside of the specific area of naturopathic childbirth. The hearing authority is unwilling to make the assumption that the violations which were proven show a risk to the public in the other areas of the Respondent's naturopathic practice.

28. The allegations in the Request for Summary Suspension as it related to the childbirth endorsement (copy attached) have been established to the necessary degree.
29. The evidence presented imperatively requires emergency action for the public health, safety, and welfare. Specifically, summary suspension of the childbirth endorsement is necessary to prevent client harm.
30. The Findings of Fact and Conclusions of Law in this Summary Suspension hearing are for purposes of deciding whether *at this time* there is an imperative need to take emergency action. 3 V.S.A. § 814(c). The Findings of Fact and Conclusions of Law herein are for purposes of this Order only.
31. Vermont law requires that unprofessional charges be filed promptly with Respondent being afforded a prompt hearing. At any merits hearing in this matter, the prosecutor will bear the burden of proving unprofessional conduct. The Findings and Conclusions in this matter will not absolve the prosecution or Respondent from producing or challenging relevant evidence at a merits hearing. The Findings of Fact and Conclusions of Law at a contested hearing will be based exclusively on the evidence admitted at that hearing. This order is subject to motions for reconsideration but shall be effective immediately upon entry.


### Order

The Request for Summary Suspension is **Granted in Part**. Respondent's Naturopathic Childbirth endorsement is summarily suspended pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. 3 V.S.A. § 814(c).

### APPEAL RIGHTS

This is a final administrative determination by the Vermont Office of Professional Regulation. A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, 89 Main Street, Fl. 3, Montpelier, VT 05620-3402 within 30 days of the entry of this order. If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a. To request a stay of the Board's decision, please refer to the attached stay instructions.

By:

  
George K. Belcher  
Administrative Law Officer

Date: August 24, 2015

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 8/24/15

STATE OF VERMONT  
SECRETARY OF STATE  
OFFICE OF PROFESSIONAL REGULATION  
NATUROPATHIC PHYSICIANS

IN RE: )  
ANGELA J. ROBENS ) Docket No.: 2015-318  
License No. 099.0071198 )

REQUEST FOR SUMMARY SUSPENSION

**Authority**

1. The Administrative Law Officer (ALO) has jurisdiction to hear matters involving allegations of unprofessional conduct by naturopathic physicians pursuant to 3 V.S.A. §§127, 129, 129a; 26 V.S.A. Chapter 81; the Administrative Rules for Naturopathic Physicians (“RNP”); and the Rules of the Office of Professional Regulation.
2. The Administrative Law Officer is authorized by 3 V.S.A. § 814 to summarily suspend the license of a naturopathic physician when it finds that the public health, safety, or welfare imperatively requires emergency action.

**Statement of Facts**

3. Angela J. Robens (“Respondent”) of Stowe, Vermont is licensed by the State of Vermont as a naturopathic physician under license number 099.0071198. This license was originally issued on or about December 7, 2010, and is currently set to expire on or about September 30, 2016. The Respondent also has a naturopathic childbirth endorsement by the State of Vermont, under her naturopathic physician license. This endorsement was first issued on or about December 30, 2010.
4. The Respondent provided prenatal care to patient C.S. in late 2014 through birth, on or about May 20, 2015.
  - a. Despite being required by the RNP, the Respondent did not obtain adequate informed consent for naturopathic childbirth.
  - b. Despite being required by the RNP, there was no written plan for consultation, emergency transfer, and/or transport in Patient C.S.’s file.
  - c. On or about May 12, 2015, a prenatal care note states that the Respondent discussed testing for Group B Streptococcus (“GBS”) and C.S. agreed to submit to the test. No screening test was ever administered.
  - d. C.S.’s file contains a GBS informed consent document but there are no signatures or dates.

STATE OF VERMONT



Prosecuting Attorney  
Office of  
Professional Regulation  
89 Main Street  
3rd Floor  
Montpelier, VT  
05620-3402

5. On or about May 18, 2015, at or around 11:00 p.m., C.S.'s membranes ruptured and she began to leak amniotic fluid.
6. On or about May 20, 2015, the Respondent attended C.S.'s home birth in Stowe, Vermont. C.S. gave birth to a male child, R.S., at or about 3:19 a.m., over twenty eight (28) hours after her membranes had ruptured.
7. The gestational age of R.S. at birth was thirty six (36) weeks and five (5) days.
8. A few hours after delivery, R.S. developed respiratory problems and was transported to Copley Hospital in Morrisville, Vermont by ambulance.
9. On or about May 20, 2015, at or about 10:22 a.m., R.S. was pronounced dead at Copley Hospital.
10. The Chief Medical Examiner for the State of Vermont performed an autopsy and determined the cause of death was Pneumonia/Sepsis due to Group B Streptococcus ("GBS").
11. Because the GBS status of the mother was not known at the time of the child's birth, the standard of care requires prophylactic antibiotics to be administered intravenously to the mother after the onset of delivery if at least one of four conditions were present.
  - a. One condition that would require administration of a prophylactic antibiotic is delivery at less than 37 weeks gestation. C.S. gave birth at thirty six (36) weeks and five (5) days.
  - b. A second condition that would require administration of a prophylactic antibiotic is amniotic membrane rupture greater or equal to eighteen (18) hours. C.S.'s membranes ruptured over twenty eight (28) hours prior to delivery.
  - c. No prophylactic antibiotic was administered in this case.
12. The Respondent works at Stowe Natural Family Wellness, in Stowe Vermont (the "facility"). The website for the facility currently advertises one of the Respondent's practice areas as natural maternity care.
13. Members of the public, patients, and potential patients have no way of learning of Respondent's multiple deviations from standards of care and will remain unprotected pending suspension of Respondent's license. The facts as set out above establish that in order to protect the public health, safety, or welfare of the people of the State of Vermont, emergency action is imperative.

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Prosecuting Attorney  
Office of  
Professional Regulation  
89 Main Street  
3rd Floor  
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05620-3402



### Violations

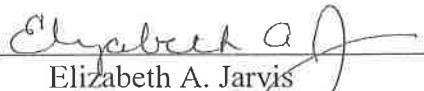
14. The above acts and circumstances, alone or in combination, violate:
- a. 3 V.S.A. §129a(b)(1) and (2) (Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (1) performance of unsafe or unacceptable patient or client care; or (2) failure to conform to the essential standards of acceptable and prevailing practice);
  - b. 3 V.S.A. §129a(a)(3) (Failing to comply with provisions of federal or State statutes or rules governing the practice of the profession);
  - c. 3 V.S.A. §129a(a)(15) (Failing to exercise independent judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession); and
  - d. RNP 3.8 (Informed Consent for Naturopathic Childbirth).

### Relief Requested

**WHEREFORE**, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's naturopathic physician license number 099.0071198 be summarily suspended pending proceedings for revocation or other action.

**DATED** at Montpelier, Vermont this 11<sup>th</sup> day of August, 2015.

STATE OF VERMONT  
SECRETARY OF STATE

By:   
Elizabeth A. Jarvis  
State Prosecuting Attorney

STATE OF VERMONT



Prosecuting Attorney  
Office of  
Professional Regulation  
89 Main Street  
3rd Floor  
Montpelier, VT  
05620-3402