

**State of New Hampshire
Midwifery Council
Concord, New Hampshire**

In the Matter of:
Jessica Davis, NHCM
License No.: 1050
(Misconduct Allegations)

Docket No.: 19-MID-001

**HEARING COUNSEL'S PETITION
TO APPROVE SETTLEMENT AGREEMENT**

NOW COMES John F. Brown, Hearing Counsel to the New Hampshire Midwifery Council ("Council"), and respectfully requests that this Honorable Council approve the *Settlement Agreement* negotiated with Jessica Davis, NHCM ("Respondent"). In support thereof, Hearing Counsel states as follows:


1. The Council first granted Respondent a certificate to practice as a certified midwife in the State of New Hampshire on January 27, 2014. Respondent holds license number 1050.
2. On or about March 20, 2020, the Council received a complaint by an attorney representing Sydney Zeff, a former client of Respondent's alleging that Respondent may have engaged in professional misconduct in the practice of midwifery, contrary to RSA 326-D:8, II and Mid 502.04 and Mid 503.
3. The Council authorized an investigation of these allegations of misconduct.
4. Based upon the results of the investigation, Hearing Counsel commenced settlement negotiations with Respondent in order to resolve the pending misconduct allegations.
5. As a result of these negotiations, on October 26, 2020, Respondent signed the *Settlement Agreement* now presented to the Council for its consideration.

6. Based upon a thorough review of all relevant information, Hearing Counsel submits that the proposed *Settlement Agreement* is reasonable, is the most appropriate resolution of the case, and adequately protects the public.

WHEREFORE, Hearing Counsel respectfully requests that this Honorable Council approve the proposed agreement in all respects.

Respectfully submitted,

Dated: October 27, 2020



John F. Brown
Attorney
Department of Justice
Consumer Protection and Antitrust Bureau
33 Capitol Street
Concord, N.H. 03301
(603) 271-6849

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Hearing Counsel's Petition to Approve Settlement Agreement* has been mailed to Respondent.

Dated: October 27, 2020



John F. Brown

State of New Hampshire
Midwifery Council
Concord, New Hampshire 03301

In the Matter of:
Jessica Davis, NHCM
License No.: 1050
(Misconduct Allegations)

Docket No.: _____

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of midwifery, the New Hampshire Midwifery Council ("Council") and Jessica Davis, NHCM ("Respondent"), a midwife certified by the Council, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Council according to the following terms and conditions:

1. Pursuant to RSA 326-D: 4; RSA 326-D: 8; RSA 541-A: 30, RSA 541-A: 31; and Midwifery Administrative Rule ("Mid") 203.01 and 404, the Council has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by midwives. Pursuant to RSA 541-A: 38; RSA 541-A: 31, V (a); and Mid 213.01, the Council may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Council first granted Respondent a certificate to practice as a certified midwife in the State of New Hampshire on January 27, 2014. She holds certificate number 1050. Respondent is self-employed.

3. On or about March 20, 2019, a complaint was filed with the Council by an attorney representing Sydney Zeff (“Zeff”), a former client of Respondent. The complaint alleged that Respondent had neglected to provide proper care during Zeff’s pregnancy and childbirth.
4. In response to this, the Council conducted an investigation and obtained information from various sources pertaining to Respondent’s practice of midwifery and the standard of care followed for the mother and baby who were the subject of the complaint.
5. Respondent neither admits nor denies the allegations herein, but stipulates that if a disciplinary hearing were to take place, Hearing counsel would seek to present evidence upon which the Council could conclude that Respondent engaged in professional misconduct by the following facts:
 - A. In March of 2018, Zeff and her husband hired Respondent to facilitate a vaginal birth for their expected child at their home in Stratham.
 - B. Respondent was aware that Zeff’s previous child had a cesarean birth.
 - C. Respondent did not make an appointment for a medical consultation with a physician. She planned to utilize Wentworth-Douglas Hospital in Dover as the back-up birth location. The hospital is more than a twenty (20) minute drive from Zeff’s home.
 - D. As Zeff’s pregnancy progressed between May and October 2018,

Respondent had regular appointments with her.

- E. On or about the evening of October 17, 2018, Zeff's water broke.

Respondent arrived at Zeff's home the following morning, but left twice, one time prior to active labor, and one time after the onset of active labor. An assistant midwife also periodically spent time at the Zeff residence. During the period of active labor, however, Zeff did not receive continuous monitoring by a midwife.

- F. On or about October 19, 2018, experiencing pain and lack of progress in labor, Zeff's husband brought her to Exeter Hospital in Exeter. Respondent travelled separately to the hospital, and left after Zeff was transferred to the hospital operating room. Zeff gave birth at the hospital.

6. The Council finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 326-D: 8, II (f), Mid 502.04 (a) (1), Mid 503.02 (g), and Mid 503.03.
7. Respondent acknowledges that this conduct constitutes grounds for the Council to impose disciplinary sanctions against Respondent's license to practice as a certified midwife in the State of New Hampshire.

8. Respondent consents to the Council imposing the following discipline, pursuant to RSA 326-D:8, III:
 - A. Respondent is REPRIMANDED.
 - B. Respondent's certification to practice as a midwife is LIMITED for a period of eighteen (18) months from the effective date of this *Settlement Agreement*. During the period of limitation, Respondent must consult with a physician, a certified nurse midwife, or a New Hampshire Certified Midwife when providing or assisting in providing any prenatal, labor, birth, or postpartum care to any client. Respondent shall submit proof of consultation to the Council every three (3) months during the period of limitation. The written proof must include the name of the clients, the dates services were provided, the name of the physician, certified nurse midwife, or New Hampshire Certified Midwife that Respondent consulted, and the signature of the physician, certified nurse midwife, or New Hampshire Certified Midwife verifying that he/she provided consultation to Respondent. Respondent may not supervise a student midwife while the limitation on her certification to practice as a midwife is in effect.
 - C. During the period of limitation on her certification, Respondent is required to meaningfully participate in a total of eight (8) hours of CONTINUING EDUCATION to be divided between the following topics: vaginal birth after cesarean (“VBAC”) and transfer of clients to medical providers. These

hours shall be in addition to the hours required by the Council for renewal of certification. Within fifteen (15) days of completing these hours, Respondent shall notify the Council and provide written proof of completion.

- D. Respondent is assessed an ADMINISTRATIVE FINE in the amount of five hundred dollars (\$500.00). Respondent shall pay this fine in full within thirty (30) days of the effective date of this *Settlement Agreement*, as defined further below, by delivering a money order or bank check, made payable to "Treasurer, State of New Hampshire," to the Council's office at 7 Eagle Square, Concord, New Hampshire, 03301.
- E. Respondent is required to pay five hundred dollars (\$500.00) towards the COSTS of INVESTIGATION and PROSECUTION of this matter. Payment shall be made in full within thirty (30) days of the effective date of this Settlement Agreement by delivering a money order or bank check, made payable to "Treasurer, State of New Hampshire," to the Board's office at 7 Eagle Square, Concord, NH 03301 and making a notation that it is "for costs of investigation and prosecution pursuant to RSA 332-G: 11".
- F. Within ten (10) days of the effective date of this agreement, as defined further below, Respondent shall furnish a copy of the *Settlement Agreement* to any current employer for whom Respondent performs services as a midwife or work which requires a midwifery degree and/or

certificate as a midwife, or directly or indirectly involves patient care, and to any agency or authority which licenses, certifies or credentials midwives, with which Respondent is presently affiliated.

G. For a continuing period of one (1) year from the effective date of this agreement, Respondent shall furnish a copy of this *Settlement Agreement*

to any employer or party to whom Respondent may apply for work as a midwife or for whom she shall work in any capacity which requires a midwife degree or training and/or midwife certificate, or directly or indirectly involves patient care, and to any agency or authority that licenses, certifies or credentials midwives, to which Respondent may apply for any such professional privileges or recognition.

9. Should Respondent fail to comply with any of the terms of this *Settlement Agreement*, the Council reserves the right to suspend Respondent's license or impose other authorized discipline, in accordance with the following process: The Council will notify Respondent, in writing, of the Council's finding of Respondent's non-compliance and the suspension and/or additional discipline it intends to impose for such non-compliance. Respondent will have ten (10) days, from the date of the Council's notification of non-compliance, to request a show cause hearing before the Council. If Respondent timely requests such a hearing, the Council will schedule a show-cause hearing for its next available hearing slot. At the hearing, Respondent will have the burden of demonstrating to the Council either

why their license should not be suspended or additional discipline imposed for non-

compliance or that they are in compliance with this *Settlement Agreement*.

Respondent has stipulated to the facts set out in Section 5 of this *Settlement*

Agreement and acknowledges and agrees that those facts cannot be challenged in

any hearing regarding enforcement of this *Settlement Agreement*. After the

hearing, the Council will issue an order explaining its reasons for imposing, or not

imposing, a suspension of Respondent's license, and/or any other discipline within

the terms of RSA 326-D: 8, III. If Respondent does not request a show cause

hearing within ten days of the date of the Council's notification of non-compliance,

the license suspension and/or additional discipline outlined in the notice of non-

compliance shall be imposed. Any imposed suspension or additional discipline

shall remain in effect until Respondent comes into compliance with this *Settlement*

Agreement and the Council notifies Respondent in writing that the suspension or

additional discipline has been lifted, unless such discipline is a license revocation.

10. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Council based upon the misconduct described above. However, the Council may consider this misconduct as evidence in the event that similar misconduct is proven against Respondent in the future. Additionally, the Council may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.

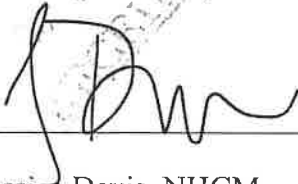
11. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Council as a public document.
12. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to her other than those terms and conditions expressly stated herein.
13. The Council agrees that in return for Respondent executing this *Settlement Agreement*, the Council will not proceed with the formal adjudicatory process based upon the facts described herein.
14. Respondent understands that her action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
15. Respondent has had the opportunity to seek and obtain the advice of an attorney of her choosing in connection with their decision to enter into this agreement.
16. Respondent understands that the Council must review and accept the terms of this *Settlement Agreement*. If the Council rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Council during its review of this *Settlement Agreement* have prejudiced her right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Council.
17. Respondent is not under the influence of any drugs or alcohol at the time she signs this *Settlement Agreement*.

18. Respondent certifies that she has read this document titled *Settlement Agreement*.
19. Respondent understands that she has the right to a formal adjudicatory hearing concerning this matter and that at said hearing she would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on her own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, she waives these rights as they pertain to the misconduct described herein.
20. This *Settlement Agreement* shall take effect as an Order of the Council on the date it is signed by an authorized representative of the Council.

New Hampshire Midwifery Council
Jessica Davis, NHCM
Settlement Agreement

FOR RESPONDENT

Date: 10/26/2020



Jessica Davis, NHCM
Respondent

FOR THE COUNCIL

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: 11/13/2020



(Signature)

CHRISTINE L. SENKO
(Print or Type)
Authorized Representative of the
New Hampshire
Midwifery Council

/* Council members, recused:

Sherry Stevens