

Policy Name	CONDUCT AND COMPETENCY COMMITTEE POLICY		Number	P4
Date Approved by Council	August 30, 2013	Revised by Council		
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1. SECTION 1 – Glossary

1.1. In this document,

- (a) “Act” refers to the *Health Disciplines Act*, R.S.A. 2000, c. H-2;
- (b) “Appeal” refers to a review under Part 5 of the Act of a decision of the Conduct and Competency Committee made under Part 4 of the Act;
- (c) “Board” refers to the Health Disciplines Board as defined under section 3 of the Act;
- (d) “Chair” refers to the chair of the College’s Conduct and Competency Committee;
- (e) “Client” refers to a person under the care of a midwife;
- (f) “College” refers to the College of Midwives of Alberta;
- (g) “Complainant” refers to the party initiating a formal complaint under Part 4 of the Act against a midwife;
- (h) “Conduct and Competency Committee” refers to the College’s Conduct and Competency Committee established under section 17 of the Act;
- (i) “Continuity of care” refers to autonomous primary care given to the woman during pregnancy and birth, and to the woman and her newborn from birth until six weeks postpartum. Continuity of care is provided by one midwife or a small group of midwives (no more than 4) which provides the opportunity to establish an ongoing partnership between a woman and her midwife/midwives.
- (j) “Director” refers to the Director of the Health Disciplines Board;
- (k) “Hearing” refers to a legal process by which both the complainant and the investigated midwife present their evidence and make their arguments regarding a complaint against a midwife;
- (l) “Investigated Midwife” refers to a registered member of the College, who is the subject of a hearing under Part 4 of the Act; “Midwife” refers to a registered member of the College;
- (m) “Preliminary Investigation” refers to a preliminary investigation under Part 4 of the Act following the Registrar’s receipt of a complaint against a registered member;

- (n) "Preliminary Investigator" refers to the Registrar, or a person appointed by the Registrar, when conducting a preliminary investigation regarding a complaint made against midwife;
- (o) "Public Member" refers to a person, appointed by the Lieutenant Governor to be a member of the Conduct and Competency Committee under s. 17 of the Act;
- (p) "Registrar" refers to the person appointed as the registrar for the College;
- (q) "Regulation" refers to the *Midwifery Regulation*, AR 328/1994;
- (r) "Standards of Competency and Practice" refers to the Alberta Midwifery Standards of Competency and Practice for the profession of midwifery established by the Health Disciplines Board, as amended from time to time;
- (s) "Standards of Conduct" refers to the standards of conduct established under s. 10 of the Regulation;
- (t) "Standards of Professional Ethics" refers to the Midwife's Standards of Professional Ethics as established under Section 2 of this policy.

2. SECTION 2 - The Midwife's Standards of Professional Ethics

2.1. The midwife's obligations to clients.

- 2.1.1. The midwife shall practice midwifery in accordance with the Alberta Health Disciplines Act and the Standards of Practice.
- 2.1.2. The midwife shall respect birth as a normal life process.
- 2.1.3. The midwife shall maintain current competency in midwifery practice.
- 2.1.4. The midwife shall respect a woman's right to informed choice.
- 2.1.5. The midwife shall maintain client privacy and confidentiality subject to health privacy legislation as it relates to midwifery and shall inform her clients of such.
- 2.1.6. The midwife shall provide continuity of care

2.2. The midwife's obligations to colleagues.

- 2.2.1. The midwife shall interact professionally, collaboratively, respectfully, and honestly with other midwives.
- 2.2.2. The midwife shall make known to the College the actions of another midwife who has engaged in unskilled practice or professional misconduct.
- 2.2.3. The midwife shall inform the College concerning unregistered persons illegally using the title 'midwife', or using any name, title, description or abbreviation in any manner so as to express or imply that the person is a registered member of the College.

2.3. The midwife's obligations to other health care professionals.

- 2.3.1. The midwife shall interact professionally, collaboratively, respectfully, and honestly with other health care professionals.
- 2.3.2. The midwife shall provide safe and appropriate care within the Standards of Competency and Practice and within the scope of practice of midwives in Alberta in all circumstances. If unable to provide safe and appropriate care, the midwife shall make all reasonable and timely attempts to secure an alternative care provider for the client.

2.4. The midwife is obligated to guard her own well-being and remain fit to practice.

3. SECTION 3 - Making a Complaint against a Midwife

3.1. Understanding complaints.

- 3.1.1. A complaint is a formal written allegation against a midwife made to the Registrar about the conduct, skill, judgment or fitness to practice of a midwife.
- 3.1.2. Matters that may form the basis of a complaint include, but are not limited to, the following:
 - 3.1.2.1. Clinical skills or knowledge;
 - 3.1.2.2. Client safety and/or advocacy;
 - 3.1.2.3. Ethical conduct, including a breach of the Standards of Professional Ethics;

- 3.1.2.4. Professional decorum including interactions with clients and their families, peers, and/or colleagues;
- 3.1.2.5. Breach of the Standards of Conduct;
- 3.1.2.6. Breach of the Standards of Competency and Practice;
- 3.1.2.7. Fitness to practice.

3.2. Matters the College has no authority over.

3.2.1. The College has no authority to address the following matters:

- 3.2.1.1. Complaints against a person who has never been a registered member of the College;
- 3.2.1.2. Complaints against a person whose registration with the College has been cancelled or suspended for more than five years;
- 3.2.1.3. Complaints that are not about the conduct, skill, judgment or fitness to practice of a midwife.

4. SECTION 4 - Filing a Formal Complaint against a Midwife

Making a complaint about a midwife's professional practice is a serious matter. Persons who consider a midwife's conduct to be unsafe, unprofessional, or unethical have the right to make a formal complaint to the College and are advised to inform the College as soon as possible after the event occurs.

4.1. Obligations of a Midwife reporting a complaint.

- 4.1.1. A midwife is obligated by the Standards of Professional Ethics to file a complaint(s) with the Registrar of the College about another midwife if it is believed the other midwife has engaged in unskilled practice or professional misconduct.

4.2. Time frame for filing a formal complaint.

- 4.2.1. Except in the case 4.2.2, there is no time limit invoked on filing a complaint. However, persons are advised to notify the College as soon as possible after the event occurred.

4.2.2. In the case where a midwife's registration is cancelled or suspended subsequent to the event in question, the complaint must be received within 5 years of the cancellation or suspension of the midwife's registration.

4.3. Submitting the formal complaint.

4.3.1.1. The formal complaint must be made in writing and signed by the complainant.

4.3.1.2. The complaint must include the following information: The name, address, postal code and telephone number of the complainant.

4.3.1.3. If the complainant is not the client, the complaint must also include the following information about the client: the client's name, address, postal code, telephone number, and an explanation of the complainant's relationship to the client.

4.3.1.4. The name(s) of the midwife or midwives complained about and the name(s) of any other midwives involved in the matter.

4.3.1.5. A concise and clear description of the complaint about the midwife.

4.3.1.6. Provide the dates the incident(s) occurred.

4.3.1.7. Give the name(s) of other caregivers from whom information should be obtained.

4.3.1.8. State the exact location(s) and address where the event(s) occurred.

4.3.2. File the formal complaint in writing to:

College of Midwives of Alberta

215, 1935 32 Avenue NE

Calgary AB T2E 7C8

4.3.3. Complaints may be submitted to the Registrar by mail, fax or scanned document attached to an e-mail. A complaint form is available on the College's website to assist complainants in making a complaint.

4.3.4. The College will not accept or acknowledge formal complaints that are sent in the body of an email.

4.4. The process after the Registrar of the College has received the formal complaint.

4.4.1. The Registrar reviews the formal complaint and must:

4.4.1.1. Review the written information submitted in the formal complaint;

4.4.1.2. Determine whether the College has jurisdiction to investigate the matter;

4.4.1.3. Forthwith determine whether the Registrar will conduct a preliminary investigation him or herself, or whether he or she will appoint a preliminary investigator.

5. SECTION 5 - The Preliminary Investigation Process

5.1. Duties of the Registrar.

5.1.1. The Registrar shall conduct the preliminary investigation or appoint a preliminary investigator to conduct a preliminary investigation regarding the midwife.

5.1.2. In the absence of a formal complaint, if the Registrar has evidence showing that the conduct, skill, judgment, or fitness to practice of a midwife poses a significant risk to the public; the Registrar may consult with the Director about initiating a preliminary investigation against the midwife. After consultation with the Director, the Registrar may conduct, or appoint a preliminary investigator, to conduct a preliminary investigation regarding the midwife.

5.1.3. The Registrar shall notify the midwife that a preliminary investigation will be conducted, giving reasonable particulars of the matter to be investigated.

5.2. Suspension pending decision

5.2.1. At any time following a complaint, or following the commencement of a preliminary investigation in the absence of a complaint under s. 29(2) of the Act, the chair may recommend that the registration of a midwife be temporarily suspended pending the outcome of proceedings under Part 4 of the Act. The registrar may suspend the registration accordingly.

5.3. The preliminary investigator may:

5.3.1. Request any person, including the complainant, to produce to the preliminary investigator any models, charts, documents, papers, notes, records, radiographs, or other materials or items in the person's possession or under the person's control;

- 5.3.2. copy and keep copies of any of the things produced;
- 5.3.3. Investigate any other matter regarding the investigated midwife that arises in the course of the preliminary investigation.
- 5.3.4. If the investigated midwife does not co-operate with a preliminary investigator, the preliminary investigator may make a complaint in writing to the Conduct and Competency Committee. Failure or refusal to co-operate may be held by the Conduct and Competency Committee to be professional misconduct.

5.4. Upon concluding a preliminary investigation, the preliminary investigator shall report the findings to the Chair, if the Registrar is the preliminary investigator, or to the Registrar, if the Registrar is not conducting the preliminary investigation.

5.5. Conclusion of preliminary investigation.

5.5.1. The Registrar or the Chair, on receipt of a report by the preliminary investigator, must decide to either:

5.5.1.1. Direct no further action be taken; or

5.5.1.2. Refer the matter to a hearing before the Conduct and Competency Committee.

5.5.2. The Registrar shall direct no further action be taken, if the Registrar is of the opinion:

5.5.2.1.1. The complaint is frivolous or vexatious, or

5.5.2.1.2. There is insufficient evidence of unskilled practice or professional misconduct.

5.5.3. Where the Registrar refers the matter to a hearing, the Registrar must refer the matter in writing to the Conduct and Competency Committee.

5.5.4. The Registrar must inform both the investigated midwife and the complainant in writing of the decision to direct no further action regarding the complaint or to refer it to a hearing.

5.5.5. If the Registrar has directed that no further action be taken, the Registrar must inform the complainant in writing of the complainant's right to request a review of that decision to the Conduct and Competency Committee under s. 31 of the Act.

5.6. Review of Decision to take no further action

- 5.6.1. A complainant may request a review of the Registrar's or Chair's decision to take no further action.
- 5.6.2. A request for review must be made in writing to the Registrar.
- 5.6.3. A request for review must be filed with the College within 30 days of the complainant receiving notice of the Registrar's or Chair's decision to take no further action regarding the complaint.
- 5.6.4. Upon receiving a request for review, the Conduct and Competency Committee conducts the review under s. 31 of the Act.
- 5.6.5. The Conduct and Competency Committee must invite the complainant and the midwife to attend before it to make representations.
- 5.6.6. Conduct and Competency Committee considers the material gathered in the preliminary investigation, the request for review and any submissions made by the complainant and the midwife. A review under s. 31 of the Act is not a fully contested hearing with sworn witnesses.
- 5.6.7. The Conduct and Competency Committee must decide either to:
 - 5.6.7.1. Take no further action; or
 - 5.6.7.2. refer the matter to a hearing before the Conduct and Competency Committee.
- 5.6.8. The Conduct and Competency Committee shall take no further action if it is frivolous or vexatious, or if there is insufficient evidence of unskilled practice or professional misconduct to warrant a hearing.
- 5.6.9. The Conduct and Competency Committee shall refer the matter to a hearing if there is sufficient evidence of unskilled practice or professional misconduct to warrant a hearing.
- 5.6.10. The Conduct and Competency Committee shall provide its decision in writing, including the reasons for its decision. The Conduct and Competency Committee shall provide both the complainant and the midwife with a written copy of its decision and reasons.

6. SECTION 6 – Hearing

6.1 Upon referral of matter to hearing from the Registrar or the Chair, the Conduct and Competency Committee will conduct a hearing under Part 4 of the Act.

6.1.1 Instead of a judge there is an impartial panel of a minimum of 3 Members.

6.1.2 A hearing is a legal proceeding that may include lawyers, witnesses and/or a court reporter.

6.2 The Conduct and Competency Committee shall schedule the hearing to commence within 90 days of receiving the referral to a hearing.

6.3 No less than 30 days before the hearing, the Registrar shall:

6.3.1 Serve on the investigated member the following:

6.3.1.1 A copy of the complaint; and

6.3.1.2 A notice of hearing, stating the date, time and place of the hearing,

6.3.2 Serve on the complainant a notice of hearing, stating the date, time and place of the hearing.

6.4 The Conduct and Competency Committee shall conduct the hearing in accordance with sections 33 to 46 of the Act.

7. SECTION 7 - Decisions

7.1 At the conclusion of the hearing, the Conduct and Competency Committee must determine whether it is more likely than not that the alleged conduct occurred.

7.2 Where the Conduct and Competency Committee finds that it is more likely than not that the alleged conduct has occurred, it must decide if the conduct of the investigated midwife:

7.2.1 constitutes unskilled practice;

7.2.2 constitutes professional misconduct;

7.2.3 constitutes both unskilled practice and professional misconduct;

7.2.4 or does not constitute unskilled practice or professional misconduct.

7.3 The conduct of the investigated midwife constitutes unskilled practice or professional misconduct, whether or not the conduct is disgraceful or dishonourable, if it is:

7.3.1 detrimental to the best interests of the public,

7.3.2 contravenes the Act or the Regulation, or

7.3.3 displays a lack of knowledge, skill or judgment in the practice of midwifery.

7.4 Examples of unskilled practice or professional misconduct may include, but are not limited to, where the investigated midwife:

7.4.1 contravened the Standards of Professional Ethics;

7.4.2 contravened the Standards of Competency and Practice;

7.4.3 contravened the Standards of Conduct;

7.4.4 is guilty of an offence that is relevant to the midwife's suitability to practice;

7.4.5 engaged in inappropriate communications or relations with clients, the public, other midwives, or other health care professionals in the course of his or her practice;

7.4.6 displayed a lack of knowledge, skill, or judgment in the practice of midwifery; or

7.4.7 demonstrated incapacity or unfitness to practice midwifery.

7.5 The Conduct and Competency Committee may then make one or more of the following decisions and orders concerning the investigated midwife:

7.5.1 reprimand the investigated midwife;

7.5.2 suspend the investigated midwife's registration for a specified period;

7.5.3 suspend the investigated midwife's certificate of registration until the investigated midwife has completed a specified course of studies or obtained supervised practical experience, or the Conduct and Competency Committee is satisfied as to the competency of the investigated midwife;

7.5.4 accept, in place of suspension, the investigated midwife's undertaking to limit her practice;

7.5.5 impose any conditions on the investigated midwife's registration that the Conduct and Competency Committee considers appropriate, including but not limited to:

7.5.5.1 practice under supervision;

7.5.5.2 undergo periodic review of her practice by a designated Midwife;

7.5.5.3 submit records for periodic audit;

7.5.5.4 report to the Committee regarding any specified matters;

7.5.5.5 refrain from engaging in sole practice for the time specified by the Committee;

7.5.5.6 require the investigated midwife to satisfy the Conduct and Competency Committee that an ailment, disability or addiction has been overcome, the investigated midwife's certificate of registration being suspended until such time the Conduct and Competency Committee is so satisfied;

7.5.5.7 require the investigated midwife to take seek counseling;

7.5.5.8 require the investigated midwife to waive, reduce or repay a fee for services that were not provided or were improperly provided;

7.5.5.9 cancel the registration of the investigated midwife;

7.5.5.10 order the investigated midwife to pay all or part of the costs of the hearing and/or fine the midwife up to \$5,000 for each finding of unskilled practice or professional misconduct, the aggregate maximum fine being \$10,000;

7.5.5.11 any further or other order that it considers appropriate.

7.6 The midwife whose registration is suspended shall not practice midwifery until notified by the Registrar in writing that the suspension has been revoked or the suspension has expired in accordance with its terms.

7.7 Advisement of Previous Findings of Unskilled Practice or Professional Misconduct

7.7.1 To assist the Conduct and Competency Committee in making an order under SECTIONS 7.6 and 9 of this policy, the Committee may be advised of any previous findings of unskilled practice or professional misconduct and the circumstances under which the previous finding or finding was issued.

7.8 The written decision

7.8.1 The Conduct and Competency Committee shall, within a reasonable time following the completion of a hearing, provide a written decision, consisting of:

7.8.1.1 reasons for its decision, and

7.8.1.2 a statement of any order made.

7.8.2 The Conduct and Competency Committee shall forward to the Registrar

7.8.2.1 the written decision;

7.8.2.2 the record of the proceedings, consisting of all evidence presented before it, including all exhibits and documents; and

7.8.2.3 a summary of all testimony given before it.

7.8.3 The Registrar shall, on receiving the decision and record, serve a copy of the decision and a statement of the right to appeal the decision to the Board on the investigated midwife and the complainant.

7.8.4 The registrar shall send a copy of the decision to the Director.

7.8.5 The investigated midwife, the Director and the complainant may examine the record of the hearing. On payment of the cost of providing it, the midwife or the complainant may request a copy of the transcript of the oral evidence given during the hearing, if a transcript was made.

8. SECTION 8 Appeals

8.1 Appeal to Board

- 8.1.1 An investigated person or the complainant, if any, may appeal a finding or an order, or both, of the Conduct and Competency Committee to the Board by notice in writing. An appeal is conducted in accordance with Part 5 of the Act.

9. SECTION 9 - Publication

- 9.1. Following completion of a hearing, the Conduct and Competency Committee may consider whether publication of the whole or any part of its decision, including a summary, is appropriate in the circumstances, for the purposes of protecting the public through general deterrence to the profession and/or specific deterrence to the investigated midwife.

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