

The following **working draft** of the Texas Midwifery Board's Ad Hoc Rule Review Committee is current as of October 24, 2011. The Committee anticipates presenting recommendations on rule review to the Board at the February 20, 2012 meeting in Austin, Texas.

Format of the draft:

- If the full text of a section of the rules is included below, the Committee is still in the process of discussing the section.
- If only specific lines are included and the rest of the section is marked with “(No change.)”, then the Committee has completed work on that section; however, any person may attend the open public meetings of the Committee and/or submit comments to the Committee in writing to request that the Committee reconsider that section.
- This working draft is subject to revision and final approval by the full Board before proposed rules will be published in the Texas Register for formal public comment.

Texas Midwifery Board
Texas Department of State Health Services
Mail Code 1982
P.O. Box 149347
Austin , Texas 78714-9347
E-mail: midwifery@dshs.state.tx.us
Telephone: (512) 834-4523
Fax: (512) 834-6677

Website: <http://www.dshs.state.tx.us/midwife/>

Legend: (Proposed Amendment(s))

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§831.1. Introduction.

(a) (No change.)

(b) Construction. These sections cover definitions; the Midwifery Board; board member training; the petition for the adoption of a rule; license required; fees; initial application; renewal; late renewal; renewal for retired midwives performing charity work; state midwifery roster; grounds for denial of application or disciplinary action; application or renewal with criminal conviction; surrender of license; reissuance of license after revocation, suspension or surrender; request for criminal history evaluation letter; licensing of spouses of members of the military; education committee; basic midwifery education; education course approval; education course denial or revocation of approval; exam approval, denial, or revocation of approval; complaints concerning education courses and comprehensive exams; jurisprudence examination; continuing education; standards for the practice of midwifery in Texas; definitions; **[protocols;]** termination of the midwife-client relationship; transfer of care in an emergency situation; prenatal care; labor and delivery; postpartum care; newborn and infant care; the administration of oxygen; eye prophylaxis; newborn screening; the informed choice and disclosure statement; the provision of support services; complaint review committee; reporting violations and/or complaints; records of complaints; complaint categories; disciplinary action and guidelines; complaint investigation; informal settlement conferences; hearings; disciplinary action; complaint disposition and appeals; refunds; cease and desist order; emergency suspension; and default orders.

§831.2. Definitions.

The following words and terms when used in these sections shall have the following meaning unless the context clearly indicates otherwise:

(1) – (15) (No change.)

(16) Normal childbirth--The labor and vaginal delivery at or close to term (36 **[37]** up to 42 weeks) of a pregnant woman whose assessment reveals no abnormality or signs or symptoms of complications.

(17) Physician--A physician licensed to practice medicine in Texas by the Texas Medical Board **[of Medical Examiners]**.

(18) – (20) (No change.)

(21) Standing delegation orders--Written instructions, orders, rules, regulations or procedures prepared by a physician and designated for a patient population, and delineating under what set of conditions and circumstances actions should be instituted, as described in the rules of the Texas Medical Board [of Medical Examiners] in Chapter 193 (relating to standing delegation orders) and §831.52 of this title (relating to Inter-professional Care).

§831.3. Midwifery Board.

(a) Membership. Members are appointed by the Commissioner in accordance with the composition specified by the [**Texas Midwifery**] Act. A record of attendance shall be kept at each meeting. If a member misses two consecutive meetings, written notice shall be given to the member. A third consecutive absence from a regularly scheduled meeting shall be grounds for membership termination by the board.

(b) – (d) (No change.)

§831.4. Board Member Training.

(a) (No change.)

(b) The training program must provide the person with information regarding:

(1) this chapter and the programs, functions, rules, policies, and budget of the Midwifery Board;

(2) – (4) (No change.)

(c) (No change.)

§831.7. Petition for the Adoption of a Rule.

(a) (No change.)

(b) Submission of the petition.

(1) – (3) (No change.)

(4) The petition shall be mailed or delivered to the Texas Midwifery Board, Department of State Health Services, MC-1982 P.O. Box 149347, [1100 West 49th Street,] Austin, Texas 78714 [78756].

(c) – (d) (No change.)

§831.11. License Required.

(a) (No change.)

(b) A midwife license shall be valid for a renewal period of two years [**starting March 1, 2006,**] except for initial licensure.

(c) (No change.)

§831.12. Fees.

All fees must be made payable to the Department of State Health Services and are non-refundable.

(1) – (2) (No change.)

[(3) Late processing fee (before September 1, 2007)--\$125.]

(3) **[(4)]** Late processing fee **[(on or after September 1, 2007)]:**

(A) less than 90 days late--a fee that is equal to 1/4 times the amount of the renewal fee due; or

(B) more than 90 days and less than one year late--a fee that is equal to 1/2 times the amount of the renewal fee due.

(4) Duplicate license fee--\$20.

(5) – (12) (No change.)

§831.13. Initial Application for Licensure.

(a) – (b) (No change.)

§831.14. License Renewal.

[License renewal.] Licensed midwives must apply for license renewal during the last January of each two-year renewal period. The Midwifery Program will send renewal applications to licensed midwives during the last December of each renewal period. However, each midwife is solely responsible for compliance with the requirements for license renewal, and nonreceipt of the renewal application mailed by the Midwifery Program shall not constitute an acceptable excuse for failure to comply. A midwife's application for license renewal must include the following:

(1) – (6) (No change.)

§831.15. Late Renewal.

(a) Late license renewal. A midwife who fails to apply for license renewal by March 1 of the end of a renewal period in which the midwife is currently licensed, as evidenced by a valid United States Postal Service or recognized commercial carrier postmark, may apply for late license renewal on or before March 1 of the following year. Applications for late license renewal must include the following:

(1) each of the items listed in §831.14 of this title (relating to License Renewal); and

(2) (No change.)

(b) (No change.)

§831.16. Renewal for Retired Midwives Performing Charity Work.

(a) – (b) (No change.)

(c) A retired midwife who is not practicing midwifery in Texas, except for providing voluntary charity care, may apply to renew his or her midwifery license under this subsection by submitting all the items required by §831.14 of this title (relating to License Renewal) except for the retired midwife renewal fee, not the regular renewal fee.

(d) – (f) (No change.)

§831.17. State [**Midwifery**] Roster of Licensed Midwives.

The Midwifery Program shall maintain a roster of all individuals currently licensed to practice midwifery in the state. A copy of the roster shall be provided to each county clerk and local registrar of births on request. The Midwifery Program shall also provide information on new and/or late licensees to individual county clerks and local registrars of births during the course of a year as needed.

§831.20. Grounds for Denial of Application or Disciplinary Action.

Grounds for denial of application for licensure or license renewal and for disciplinary action.

(1) The Midwifery Board may deny an application for initial licensure or license renewal and may take disciplinary action against any person based upon proof of the following:

(A) violation of the Act or rules adopted under the Act;

(B) submission of false or misleading information to the Midwifery Board, the board, or the department;

(C) conviction of a felony or a misdemeanor involving moral turpitude;

(D) intemperate use of alcohol or drugs while engaged in the practice of midwifery;

(E) unprofessional or dishonorable conduct that may reasonably be determined to deceive or defraud the public;

(F) inability to practice midwifery with reasonable skill and safety because of illness, disability, or psychological impairment;

(G) judgment by a court of competent jurisdiction that the individual is mentally impaired;

(H) disciplinary action taken by another jurisdiction affecting the applicant's legal authority to practice midwifery;

(I) submission of a birth or death certificate known by the individual to be false or fraudulent, or other noncompliance with Health and Safety Code, Chapter 191, or 25 Texas Administrative Code (TAC), Chapter 181 (relating to Vital Statistics);

(J) noncompliance with Health and Safety Code, Chapter 244, or 25 TAC, Chapter 137 (relating to Birthing Centers);

(K) failure to practice midwifery in a manner consistent with the public health and safety;

(L) failure to submit midwifery records **[and/or protocols]** in connection with the investigation of a complaint; or

(M) demonstrated lack of personal or professional character in the practice of midwifery.

(2) The Midwifery Board may refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter J of the Act, unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

§831.21. Application or Renewal with Criminal Conviction.

Licensure of persons with criminal convictions.

(1) The Midwifery Board may refuse to issue a license to, or renew the license of, any individual who has been initially convicted of a felony or a misdemeanor involving moral turpitude, or whose probation imposed pursuant to such conviction has been revoked by the court.

(2) – (4) (No change.)

§831.22. **[Surrender of]** License Surrender.

(a)- (c) (No change.)

§831.23. Application for a New **[Reissuance of]** License after Revocation, Suspension, or Surrender.

(a) A person whose license to practice midwifery in this state has been revoked or suspended by the Midwifery Board or who has surrendered his or her license after having received notice that the Midwifery Program is investigating a complaint may not apply for a new **[reissuance of]** license until the applicant has complied with all requirements imposed by the Midwifery Board in connection with the revocation, suspension, or surrender. If the Midwifery Board proposes to deny the application for a new **[reissuance of]** license, an applicant may request a hearing in accordance with the provisions of the Administrative Procedure Act (APA), Government Code, Chapter 2001, applicable state and federal statutes, the Rules of Practice and Procedures of the State Office of Administrative Hearings (SOAH) and this chapter.

(b) The Midwifery Board may **[reissue]** issue a new license to a midwife who surrendered his or her license while an investigation or disciplinary action was pending only if the Midwifery Board finds that:

(1) the applicant is competent to resume practice; **[and]**

(2) the Midwifery Program has no evidence of current or continuing violations by the applicant of the Act or this subchapter~~[.]~~ ; and

(3) the applicant meets the current requirements for licensure.

§831.24. Request for a Criminal History Evaluation Letter.

(a) – (e) (No change.)

Legend: (Proposed New Rule(s))

Regular Print = Proposed new language

§831.25 Licensing of Spouses of Members of the Military

(a) This section sets out the alternative license procedure for military spouse required under Occupations Code, Chapter 55 (relating to License While on Military Duty and for Military Spouse).

(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license issued by another state that has licensing

requirements shall complete and submit an application form and fee to the department. In accordance with Occupations Code, Section 55.004(c), the department may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(c) The spouse of a person serving on active duty as a member of the armed forces of the United States who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order.

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§831.31. Education Committee.

(a) The chair of the Midwifery Board shall appoint an education committee for a two year term, with the approval of the Midwifery Board, to consider all issues related to mandatory basic and continuing midwifery education. The Education Committee shall review all applications submitted by the Midwifery Program staff for approval of mandatory basic midwifery education courses or comprehensive exams, as well as complaints concerning approved courses or exams. The Education Committee shall **[will]** consist of members of the Midwifery Board:

(1) – (3) (No change.)

(b) – (c) (No change.)

§831.32. Basic Midwifery Education.

(a) (No change.)

(b) Mandatory basic midwifery education shall:

(1) – (5) (No change.)

(6) provide clinical experience/preceptorship of at least one year in duration but no more than five years in duration and equivalent to 1350 clinical contact hours which prepares the student to become certified by NARM, including successful completion of at least the following activities:

(A) (No change.)

(B) serving as the primary midwife, under supervision, in attending 20 additional births, at least 10 of which shall be out-of-hospital births. [;] A minimum of three of the 20 births attended as primary midwife under supervision must be with women for whom the student has provided primary care during at least four prenatal visits, birth, newborn exam and one postpartum exam.

(C) (No change.)

(7) (No change.)

(c) (No change.)

§831.33. Education Course Approval.

(a) Course approval.

(1) The course supervisor/administrator shall submit an application form and a non-refundable initial midwifery course application fee to the Midwifery Program with the following supporting documentation:

(A) – (D) (No change.)

(E) written policies to include:

(i) - (iii) (No change.)

(iv) requirements for state licensure **[documentation]**;

(v) – (vii) (No change.)

(2) – (4) (No change.)

(b) – (d) (No change.)

§831.34. Education Course Denial or Revocation of Approval.

(a) (No change.)

(b) Revocation of course approval. The Midwifery Board may revoke the approval of a course after notifying the course supervisor/administrator of its intended action and the opportunity for an appeal, if the Midwifery Board determines that:

(1) the course no longer meets one or more of the standards established by this subsection;

(2) – (5) (No change.)

(c) – (f) (No change.)

§831.35. Exam Approval, Denial, or Revocation of Approval.

Comprehensive exams.

(1) Comprehensive exam approval.

(A) Any approved education course or midwifery association may submit an application form and a non-refundable exam initial application fee to the Midwifery Program with the following supporting documentation:

(i) – (v) (No change.)

(vi) a certified audit **[financial statement or balance sheet]** (within the last year) for the course supervisor/administrator or course owner or midwifery association and disclosure of any bankruptcy within the last five years; and

(vii) (No change.)

(B) – (F) (No change.)

(2) – (6) (No change.)

§831.36. Complaints Concerning Education Courses and Comprehensive Exams.

(a) – (b) (No change.)

(c) Complaint investigation. The Midwifery Program Director shall:

(1) notify the course supervisor/administrator or course owner or midwifery association of the Midwifery Program's receipt of the complaint by certified mail or hand delivery;

(2) – (7) (No change.)

(d) – (i) (No change.)

§831.37. Jurisprudence Examination.

(a) (No change.)

(b) The subject matter covered by the examination shall include the Act, this chapter, and other Texas laws and rules which affect midwifery practice, as described in the current Texas Midwifery Basic Information and Instructor Manual.

(c) –(e) (No change.)

§831.40. Continuing Education.

All continuing education taken by midwives for the purpose of obtaining or renewing a midwifery license must be in accordance with this section.

(1) – (4) (No change.)

(5) Course approval. Continuing education courses attended to fulfill licensure or license renewal requirements shall be accepted when the courses:

(A) – (B)

§831.51. Standards for the Practice of Midwifery in Texas

(a) Purpose. To establish standards for safe midwifery care.

(b) Midwifery is the practice by a midwife of giving the necessary supervision, care, and advice to a woman during normal pregnancy, labor and the postpartum period; conducting a normal delivery of a child; and providing normal newborn care.

(c) Midwifery practice is based upon education in the sciences and upon necessary clinical skills as defined in §831.11 of this title (relating to License Required) and §831.32 of this title (relating to Basic Midwifery Education). The education shall be obtained through apprenticeship or an approved basic midwifery education course.

(d) Midwifery care is provided by qualified practitioners. The midwife:

(1) is regulated by the Texas Midwifery Board; and

(2) is in compliance with the legal requirements of the State of Texas while practicing in the state.

(e) Midwifery care supports individual rights and self-determination within the boundaries of safety. The midwife shall:

(1) provide clients with a description of the scope of midwifery services and information regarding the client's rights and responsibilities in accordance with §203.351 of the Texas Midwifery Act;

(2) assess the client on an ongoing basis for any factors which might preclude a client from admission into or continuing in midwifery care;

(3) [(2)] provide clients with information about other providers and services when requested or when the care required is not within the scope of practice of midwifery; [, or as further limited by the protocols of the individual midwife;] and

(4) [(3)] practice in accordance with the knowledge, clinical skills, and judgments described in the Midwives Alliance of North America (MANA) Core Competencies for Basic Midwifery Practice, adopted August 4, 2011 [October 3, 1994] within the bounds of the midwifery scope of practice as defined by the Texas Midwifery Act; and the Texas Midwifery Board Standards for the Practice of Midwifery in Texas. **[and the protocols of the individual midwifery service/practice.]**

(f) The midwife shall provide care in a safe and clean environment. The midwife shall:

(1) carry, and use, when needed, resuscitation equipment; and

(2) use universal precautions for infection control.

(g) Midwifery care is documented in legible, complete health records. The midwife shall:

(1) maintain records that completely and accurately document the client's history, physical exam, laboratory test results, antepartum visits, consultation reports, referrals, labor, delivery, postpartum visits, and neonatal evaluations at the time midwifery services are delivered and when reports are received;

(2) grant clients access to their records within 30 days of the date the request is received;

(3) provide a mechanism for sending a copy of the health record upon referral or transfer to other levels of care;

(4) maintain the confidentiality of client records; and

(5) maintain records:

(A) for the mother, for a minimum of five years; and

(B) for the infant, until the age of majority.

(h) Midwifery care includes documentation of a periodic process of evaluation and quality assurance of midwifery practice. The midwife shall:

(1) collect client care data systematically and be involved in analysis of that data for the evaluation of the process and outcome of care;

(2) review problems identified by the midwife or by other professionals or consumers in the community; and

(3) act to resolve problems that are identified.

§831.52. Inter-professional Care

The following definitions regarding inter-professional care of women within a midwifery model of care apply to this chapter.

(1) Consultation is the process by which a midwife, who maintains primary management responsibility for the woman's care, seeks the advice of another health care professional or member of the health care team.

(2) Collaboration is the process in which a midwife and a health care practitioner of a different profession jointly manage the care of a woman or newborn who needs joint care, such as one who has become medically complicated. The scope of collaboration may encompass the physical care of the client, including delivery, by the midwife, according to a mutually agreed-upon plan of care. If a physician must assume a dominant role in the care of the client due to increased risk status, the midwife may continue to participate in physical care, counseling, guidance, teaching, and support. Effective communication between the midwife and the health care professional is essential to ongoing collaborative management.

(3) Referral is the process by which a midwife directs the client to a health care professional who has current obstetric or pediatric knowledge and is either a physician licensed in the United States; or working in association with a licensed physician. The client and the physician (or associate) shall determine whether subsequent care shall be provided by the physician or associate, the midwife, or through collaboration between the physician or associate and midwife. The client may elect not to accept a referral or a physician or associate's advice, and if such is documented in writing, the midwife may continue to care for the client. **[according to his/her own policies and protocols.]**

(4) Transfer is the process by which a midwife relinquishes care of the client for pregnancy, labor, delivery, or postpartum care or care of the newborn to another health care professional who has current obstetric or pediatric knowledge and is either a physician licensed in the United States; or working in association with a licensed physician. If a client elects not to accept a transfer, the midwife shall terminate the midwife-client relationship according to §831.57 of this title (relating to Termination of the Midwife-Client Relationship). If the transfer recommendation occurs during labor, delivery, or the immediate postpartum period, and the client refuses transfer; the midwife shall call 911 and provide further care as indicated by the situation. If the midwife is unable to transfer to a health care professional, the client will be transferred to the nearest

appropriate health care facility. The midwife shall attempt to contact the facility and continue to provide care as indicated by the situation.

(5) Standing orders from a physician licensed in Texas must be obtained if a midwife provides any prescription medication to a client or her newborn other than oxygen and eye prophylaxis. The orders must be current (renewed annually) and must comply with the rules of the Texas Medical Board. Midwives have the responsibility not to comply with an outdated order.

~~§831.54. Policies and Protocols~~

~~_____ (a) The midwife shall establish, review, update, and adhere to individualized policies and protocols in the practice of midwifery. These protocols shall be consistent with standard midwifery management as described in a standard midwifery textbook or a combination of standard textbooks and references. Any textbook or reference which is also an approved text or reference for a midwifery educational program or school which has been approved by the Texas Midwifery Board shall be considered an acceptable textbook or reference for use in developing a midwife's personal protocols. The midwife shall maintain and update a written record of the textbooks and references upon which she/he has based each protocol and submit that record to the Midwifery Program upon request.~~

~~_____ (b) The midwife shall:~~

~~_____ (1) establish policies or protocols for each practice area, which include but are not limited to:~~

~~_____ (A) antepartum;~~

~~_____ (i) parameters and methods for initial assessment of the current pregnancy, including history, physical exam/assessment, and laboratory tests;~~

~~_____ (ii) parameters and methods for assessing the progress of pregnancy, including history, physical exam/assessment, and laboratory tests;~~

~~_____ (iii) parameters and methods for assessing fetal well being, including history, physical exam/assessment, and laboratory tests;~~

~~_____ (iv) indicators of risk in pregnancy and appropriate intervention in accordance with §831.60 of this title (relating to Prenatal Care); and~~

~~_____ (v) medications and natural remedies used during pregnancy;~~

~~_____ (B) intrapartum;~~

- _____ (i) parameters and methods for assessment of labor and birth, including history, physical exam/assessment, and laboratory tests;

- _____ (ii) medications and natural remedies used during labor and birth;

- _____ (iii) methods to facilitate the newborn's adaptation to extrauterine life; and

- _____ (iv) significant deviations from normal and appropriate interventions in accordance with §831.65 of this title (relating to Labor and Delivery);

- _____ (C) postpartum and newborn;

- _____ (i) parameters and methods for assessing the postpartum status of the mother, including history, physical exam/assessment, and laboratory tests;

- _____ (ii) parameters and methods for assessing the well being of the newborn, including history, physical exam/assessment, and laboratory tests;

- _____ (iii) medications and natural remedies used in the postpartum and newborn period; and

- _____ (iv) significant deviations from normal and appropriate interventions in accordance with §831.70 of this title (relating to Postpartum Care) and §831.75 of this title (relating to Newborn and Infant Care);

- _____ (2) develop and implement a plan of care based on the policies and protocols;

- _____ (3) evaluate and modify the plan of care as necessary;

- _____ (4) provide health education and counseling based on the policies and protocols;

- _____ (5) assess the client on an ongoing basis for any factors which might preclude a client from admission into or continuing in midwifery care based on the policies and protocols;

- _____ (6) review and document review of all policies and protocols at least annually; and

- _____ (7) modify policies and protocols as needed, and document any changes.

§831.57. Termination of the Midwife-Client Relationship

A midwife shall terminate care of a client only in accordance with this section unless a transfer of care results from an emergency situation.

(1) Once the [a] midwife has accepted a client, the relationship is ongoing and the midwife cannot refuse to continue to provide midwifery care to the client unless:

- (A) the client has no need of further care;
- (B) the client terminates the relationship; or
- (C) the midwife formally terminates the relationship.

(2) The midwife may terminate care for any reason by:

(A) providing a minimum of 30 days written notice, during which the midwife shall continue to provide midwifery care, to enable the client to select another health care provider;

(B) making an attempt to tell the client in person and in the presence of a witness of the midwife's wish to terminate care;

(C) providing referrals; and

(D) documenting the termination of care in midwifery records.

§831.58. Transfer of Care in An Emergency Situation

In an emergency situation, the midwife shall initiate emergency care as indicated by the situation and immediate transfer of care [**in accordance with the protocols of his or her practice**] by making a reasonable effort to contact the health care professional or institution to whom the client will be transferred and to follow the health care professional's instructions; and continue emergency care as needed while:

- (1) transporting the client by private vehicle; or
- (2) calling 911 and reporting the need for immediate transfer.

§831.60. Prenatal Care

(a) The midwife shall collect, assess, and document maternal care data through a detailed obstetric, gynecologic, medical, social, and family history and a complete prenatal physical exam and appropriate laboratory testing; develop and implement a plan of care; thereafter evaluate the client's condition on an ongoing basis; and modify the

plan of care as necessary. Health education/counseling shall be provided by the midwife as appropriate.

(b) If on initial or subsequent assessment, one of the following conditions exists, the midwife shall recommend referral as defined in §831.52 of this title (relating to Inter-Professional Care) and document that recommendation in the midwifery record:

- (1) infection requiring antimicrobial therapy;
- (2) Hepatitis;
- (3) non-insulin dependent diabetes;
- (4) thyroid disease;
- (5) current drug or alcohol abuse;
- (6) asthma;
- (7) abnormal pap smear (consistent with malignancy or pre-malignancy) during the current pregnancy;
- (8) seizure disorder;
- (9) prior cesarean section (except for prior classical or vertical incision, which will require transfer in accordance with subsection (c)(8) of this section);
- (10) multiple gestation;
- (11) history of prior antepartum or neonatal death;
- (12) history of prior infant with a genetic disorder;
- (13) significant vaginal bleeding;
- (14) maternal age less than 15 at EDC;
- (15) cancer or history of cancer;
- (16) psychiatric illness; or
- (17) any other condition or symptom which could adversely affect the mother or fetus, as assessed by a midwife exercising [**ordinary and**] reasonable skill and knowledge.

(c) If on initial or subsequent assessment, one of the following conditions exists, the midwife shall recommend transfer in accordance with §831.52 of this title and document that recommendation in the midwifery record:

- (1) placenta previa in the third trimester;
- (2) Human Immunodeficiency Virus (HIV) positive or Acquired Immunodeficiency Syndrome (AIDS);
- (3) cardio vascular disease, including hypertension, with the exception of varicosities;
- (4) severe psychiatric illness;
- (5) history of cervical incompetence with surgical therapy;
- (6) pre-term labor (less than 36 weeks);
- (7) Rh or other blood group isoimmunization;
- (8) any previous cesarean section with a vertical or classical incision, or any previous uterine surgery which required an incision in the uterine fundus;
- (9) preeclampsia/eclampsia;
- (10) documented oligo-hydramnios or poly-hydramnios;
- (11) any known fetal malformation;
- (12) preterm premature rupture of membranes (PPROM);
- (13) intrauterine growth restriction;
- (14) insulin dependent diabetes; or
- (15) any other condition or symptom which could threaten the life of the mother or fetus, as assessed by a midwife exercising reasonable [ordinary] skill and knowledge [education].

(d) In lieu of referral or transfer, the midwife may manage the client in collaboration with an appropriate health care professional as defined in §831.52 of this title.

§831.65. Labor and Delivery

(a) The midwife shall evaluate the client when the midwife arrives for labor and delivery, by obtaining a history, performing a physical exam, and collecting laboratory specimens.

(b) The midwife shall monitor the client's progress in labor by monitoring vital signs, contractions, fetal heart tones, cervical dilation, effacement, station, presentation, membrane status, input/output and subjective status.

(c) The midwife shall assist in normal[,] childbirth [**spontaneous vaginal deliveries**].

(d) The midwife shall not engage in the following:

(1) application of fundal pressure on abdomen or uterus during first or second stage of labor;

(2) administration of oxytocin, ergot, or prostaglandins prior to or during first or second stage of labor; or

(3) any other prohibited practice as delineated by the Act, §203.401 (relating to Prohibited Practices).

(e) If on initial or subsequent assessment during labor or delivery, one of the following conditions exists, the midwife shall initiate immediate emergency transfer in accordance with §831.58 of this title (relating to Transfer of Care in an Emergency Situation) and document that action in the midwifery record:

(1) prolapsed cord;

(2) chorio-amnionitis;

(3) uncontrolled hemorrhage;

(4) gestational hypertension/preeclampsia/eclampsia;

(5) severe abdominal pain inconsistent with normal labor;

(6) a non-reassuring fetal heart rate pattern;

(7) seizure;

(8) thick meconium unless the birth is imminent;

(9) visible genital lesions suspicious of herpes virus infection;

(10) evidence of maternal shock;

- (11) preterm labor (less than 36 weeks);
- (12) presentation(s) not compatible with spontaneous vaginal delivery;
- (13) laceration(s) requiring repair [**beyond the parameters set forth and documented in the protocols of the midwife**];
- (14) failure to progress in labor;
- (15) retained placenta; or
- (16) any other condition or symptom which could threaten the life of the mother or fetus, as assessed by a midwife exercising reasonable [**ordinary**] skill and knowledge.

§831.70. Postpartum Care

(a) The midwife shall assess the mother during the immediate postpartum period by monitoring vital signs, uterine fundus, bleeding and subjective status for a minimum of two hours after mother's condition is stable.

(b) The midwife shall:

- (1) collect, assess and document maternal care data throughout the postpartum period including history, physical exam, laboratory testing;
- (2) develop and implement a plan of care;
- (3) evaluate the client's condition on an ongoing basis and modify the plan of care as necessary; and
- (4) provide health education/counseling.

(c) If on any postpartum assessment one of the following conditions exists, the midwife shall recommend referral to an appropriate health care professional and document that recommendation in the midwifery record:

- (1) infection requiring antimicrobial therapy;
- (2) bladder dysfunction;
- (3) major depression;
- (4) gestational hypertension; or

(5) any other condition or symptom which could threaten the health of the mother, as assessed by a midwife exercising reasonable **[ordinary]** skill and knowledge.

(d) If on any postpartum assessment one of the following conditions exists, the midwife shall initiate immediate emergency transfer in accordance with §831.58 of this title (relating to Transfer of Care in an Emergency Situation), initiate emergency care as indicated by the situation, continue care as needed, and document that action in the midwifery record:

- (1) uncontrolled hemorrhage;
- (2) maternal shock;
- (3) preeclampsia/eclampsia;
- (4) signs of thrombophlebitis or pulmonary embolism; or

(5) any other condition or symptom which could threaten the life of the mother, as assessed by a midwife exercising reasonable **[ordinary]** skill and knowledge.

§831.75. Newborn Care During the First Six Weeks After Birth

(a) Prior to delivery, the midwife shall establish a plan with the client for continuing care of the newborn. This plan shall:

- (1) include referral or transfer to a health care professional who has current pediatric knowledge;
- (2) include a recommendation that the client pre-arrange the timing of the first newborn visit with the health care professional; and
- (3) be documented in the midwifery record.

(b) The midwife shall:

- (1) collect, assess and document newborn care data by monitoring the vital signs, performing a physical exam, and obtaining the laboratory tests necessary for the infant during the postpartum period;
- (2) provide appropriate education and counseling to the mother; and
- (3) observe the newborn for a minimum of two hours after he or she is stable with no signs of distress.

(c) If on any newborn assessment in the immediate postpartum period (first six hours of life), one of the following conditions exists, the midwife shall recommend referral in accordance with §831.52 of this title (relating to Inter-Professional Care) and document that recommendation in the midwifery record:

- (1) birth injury;
- (2) gestational age assessment less than 36 weeks;
- (3) small for gestational age;
- (4) large for gestational age; or

(5) any other abnormal newborn behavior or appearance which could adversely affect the newborn, as assessed by a midwife exercising reasonable [ordinary] skill and knowledge.

(d) If on any newborn assessment in the immediate postpartum period (first six hours of life), one of the following conditions exists, the midwife shall initiate immediate transfer to an appropriate health care professional in accordance with §831.58 of this title (relating to Transfer of Care in an Emergency Situation), initiate emergency care as indicated by the situation, continue care as needed, and document that action in the midwifery record:

- (1) non-transient respiratory distress;
- (2) non-transient pallor or central cyanosis;
- (3) jaundice;
- (4) apgar at 5 minutes less than or equal to 6;
- (5) prolonged apnea;
- (6) hemorrhage;
- (7) signs of infection;
- (8) seizure;
- (9) major congenital anomaly not diagnosed prenatally;
- (10) unstable vital signs;
- (11) prolonged:

(A) lethargy;

(B) flaccidity; or

(C) irritability;

(12) inability to suck;

(13) persistent jitteriness;

(14) hyperthermia;

(15) hypothermia; or

(16) other abnormal newborn behavior or appearance which could threaten the life of the newborn, as assessed by a midwife exercising reasonable **[ordinary]** skill and knowledge.

(e) If on any newborn assessment after the immediate postpartum period, one of the following conditions exists, the midwife shall recommend referral to an appropriate health care professional in accordance with §831.52 of this title and document that recommendation in the midwifery record:

(1) abnormal laboratory test results;

(2) minor congenital anomaly;

(3) failure to thrive; or

(4) any other abnormal newborn behavior or appearance which could adversely affect the infant, as assessed by a midwife exercising reasonable **[ordinary]** skill and knowledge.

(f) If on any newborn assessment after the immediate postpartum period, one of the following conditions exists, the midwife shall initiate immediate transfer to an appropriate health care professional in accordance with §831.58 of this title and document that action in the midwifery record:

(1) respiratory distress;

(2) pallor or central cyanosis;

(3) pathological jaundice;

(4) hemorrhage;

- (5) seizure;
- (6) inability to urinate or pass meconium within 24 hours of birth;
- (7) unstable vital signs;
- (8) lethargy;
- (9) flaccidity;
- (10) irritability;
- (11) inability to feed;
- (12) persistent jitteriness; or
- (13) any other abnormal newborn behavior or appearance which could threaten the life of the newborn, as assessed by a midwife exercising reasonable **[ordinary]** skill and knowledge.

§831.101. Administration of Oxygen

(a) Purpose. This section outlines procedures for administration of oxygen by midwives. Whether or not a midwife chooses to administer oxygen to the mother and/or newborn, the midwife remains responsible for assessing the client and/or newborn; recommending referral; and/or recommending transfer or transport of the mother and newborn in compliance with Subchapter D of this chapter (relating to Practice of Midwifery).

(b) Under this section a midwife is not required to use oxygen.

(c) Provisions. This section establishes that:

(1) intrapartum oxygen may be administered to the mother **[via mask at 8-10 liters/minute]** for the following:

(A) fetal heart rate irregularities while assessing for consultation and/or possible transfer;

(B) cord prolapse prior to transport;

(C) signs or symptoms of maternal shock or hemorrhage prior to transport; or

(D) as indicated by American Heart Association Cardiopulmonary Resuscitation guidelines;

(2) postpartum oxygen may be administered while monitoring according to the Midwifery Practice Standards and Principles:

(A) to the newborn during the initial neonatal period at a rate [**of 5 liters/minute**] concurrent with American Academy of Pediatrics Neonatal Resuscitation guidelines; or

(B) to the mother and/or newborn in other situations not listed above and deemed necessary according to generally accepted standards of midwifery practice to protect the health and well-being of the mother and/or newborn;

(3) indications for administration of oxygen shall be clearly documented in the client's chart.

(d) Midwives are authorized to purchase equipment and supplies listed in the American Heart Association Cardiopulmonary Resuscitation Guidelines and the American Academy of Pediatrics Neonatal Resuscitation Guidelines for the administration of oxygen.

§831.111. Eye Prophylaxis

(a) Each midwife is responsible for administering or requiring to be administered to [seeing that] every infant which she or he delivers [**receives**] the necessary eye prophylaxis to prevent ophthalmia neonatorum[,] in accordance with the medications specified by the department in Health and Safety Code 81.091. [Department of State Health Services.]

(b) A midwife must obtain a written exemption from treatment in accordance with HSC 81.009 from any parent who refuses to allow a midwife to administer or cause to be administered eye prophylaxis in accordance with HSC 81.091.

(c) [(b)] The administration and possession of prophylaxis by a midwife is not a violation of the provisions of the Health and Safety Code, Chapter 483, concerning dangerous drugs.

§831.121. Newborn Screening

(a) Each midwife who assists at the birth of a child is responsible for performing the [seeing that] newborn screening tests [**are performed**] according to the Health and Safety Code, Chapters 33 and 34, and 25 Texas Administrative Code §§37.51 - 37.69 (relating to Newborn Screening Program) or making a referral in accordance with this subsection. [The midwife may perform the tests or refer for them.] If the midwife performs the tests, then she or he must have been appropriately trained. Each midwife must have one of the following documents on file with the midwifery program in order to be licensed.

(1) Midwife Training Certification Form for Newborn Screening Specimen Collection. Should the midwife choose to do the newborn screening she or he will obtain training to perform this test from an appropriate health care facility. Instruction will be based upon the procedure for newborn screening developed by the department's Newborn Screening Program under authority of the Health and Safety Code, Chapter 33. At the completion of the instruction for newborn screening blood collection, the midwife will request that the form Midwife Training Certification Form for Newborn Screening Specimen Collection be signed by the designated representative of the health care facility, attesting to the fact that the midwife has complied with this requirement. This training, as part of the licensure requirements, is only necessary once unless there is a change in screening procedures.

(2) Newborn Screening Agreement for Newborn Babies of Midwife Clients. The midwife could also choose to refer the family to have the infant's screening done at an appropriate health care facility. In this case, the midwife must use the form Newborn Screening Agreement for Newborn Babies of Midwife Clients to attest to her responsibility for seeing that the screening is done and to designate a facility for such screening. The form must include a section where the facility representative signs, agreeing that the facility will do the screening.

(b) As long as the midwife has been approved to perform the newborn screening test, the act of collecting this specimen will not constitute "practicing medicine" as defined by the Medical Practice Act, Texas Occupations Code, §151.002(13).

(c) As long as one is available, a physician or an appropriately trained professional acting under standing delegation order from a physician at an appropriate health care facility shall instruct midwives in the proper procedure (newborn screening collection procedure of the department's Newborn Screening Program) for newborn screening blood specimen collection and submission. The physician, registered nurse, or any other person who instructs a midwife in the approved techniques for newborn screening on the orders of a physician is immune from liability arising out of the failure or refusal of a midwife to:

(1) collect and submit the blood specimen in an approved manner; or

(2) send the samples to the designated department laboratories in a timely manner.

(d) Newborn Screening Test Objection Form. A midwife must obtain a completed and signed Newborn Screening Test Objection Form from any parent who refuses to allow a midwife to perform the newborn screening tests.

§831.131. Informed Choice and Disclosure Statement

As required by the Act, §203.351 (relating to Informed Choice and Disclosure Requirements), the [each] midwife shall disclose in oral and written form to a prospective client the limitations on the skills and practices of the midwife. The written informed choice and disclosure statement which has been approved by the Midwifery Board shall include:

(1) an informed choice statement containing:

(A) statistics of the midwife's experience as a midwife;

(B) the date of expiration of the midwife's license;

(C) the date of expiration of the midwife's adult and infant cardiopulmonary resuscitation and neonatal resuscitation certification;

(D) the midwife's compliance with continuing education requirements;
and

(E) medical backup arrangements; and

(2) a disclosure statement, which includes the legal requirements of the midwife and prohibited acts as stated in the Act. The disclosure statement may not exceed 500 words and must be in Spanish and English; and must contain;

(3) information on where to file a complaint against a licensed midwife, including the name, mailing address and telephone number for the Texas Midwifery Board

§831.141. Provision of Support Services

This provision applies to the Department of State Health Services (department), a local health department, a public health district, or a local health unit which is owned, operated, or leased by a political subdivision of the state. The appropriate governmental entity is required to provide clinical and laboratory services to pregnant women and newborns who are clients of midwives as long as the services are required of **[the]** midwives by the Act, §203.355 (relating to Support Services). The procedure and requirements for the clinical and laboratory services are as follows.

(1) The laboratory tests are those which are standard for prenatal, postpartum, family planning and newborn care (to include serology and newborn screening).

(2) The clinical services include prenatal, postpartum, child health and family planning services.

(3) A reasonable fee may be charged for such services; however, no person may be denied services because of inability to pay.

§831.161. Complaint Review Committee.

[Complaint Review Committee.] With the approval of the Midwifery Board, the chair of the Midwifery Board shall appoint a Complaint Review Committee for two-year terms to consider all complaints filed against licensed midwives or unlicensed individuals and to make recommendations to the Midwifery Board.

(1) – (3) (No change.)

§831.162. Reporting Violations and/or Complaints.

Report of a complaint. Any person or agency may contact the Midwifery Program by telephone, in person, or in writing, alleging that a licensed midwife has violated the Act, any provisions of this subchapter, or any other law or rule relating to the practice of midwifery in Texas.

(1) Midwifery Program staff shall provide a complaint form to the complainant by mail within ten working days of being contacted by the complaint.

(2) The complaint review process begins when:

(A) the complaint form is received by the Midwifery Program;

(B) the Midwifery Program confirms that the subject of the complaint is a midwife licensed in Texas and/or practicing midwifery in Texas;

(C) the Midwifery Program confirms that the complaint is jurisdictional;

(D) the Midwifery Program confirms that the complaint alleges acts which took place not more than two years before the receipt of the complaint unless the Midwifery Program Director, in consultation with the Complaint Review Committee Chair, believes the complaint warrants consideration for acts which took place not more than five years before receipt of the complaint; and

(E) the Midwifery Program assigns a case number.

(F) The board may waive the time limitation in (2) (D) in cases of egregious acts or continuing threats to public health, welfare, or safety when presented with specific evidence that warrants such action.

(3) If the complainant has provided his or her name and address, the Midwifery Program shall confirm receipt of the complaint form in writing within ten working days.

§831.163. Records of Complaints.

Records of complaints. The Midwifery Program shall maintain the following information concerning each complaint filed, if applicable:

(1) – (6)

(7) any disciplinary action taken; and

(8) (No change.)

§831.164. Complaint Categories.

(a) The Midwifery Program Director shall assign a category for each jurisdictional complaint for the initial allocation of investigative resources in accordance with Midwifery Board policy.

(b) (No change.)

§831.165. Disciplinary Action and Guidelines.

(a) The Midwifery Board and the Complaint Review Committee shall consider the following factors when taking or recommending disciplinary action:

(1) the severity of the offense;

(2) the danger to the public;

(3) the number of repetitions of offenses;

(4) the length of time since date of violation;

(5) any other disciplinary actions taken against the midwife;

(6) the length of time the midwife has practiced;

(7) the extent of the client's injuries, physical or otherwise;

(8) any efforts at rehabilitation or remediation by the midwife;

(9) prior determinations by the Midwifery Board that the midwife has violated the Act and/or rules; and

(10) any other mitigating or aggravating circumstances.

(b) In addition to or in lieu of the penalties and sanctions under §831.169(a) of this title (relating to Disciplinary Action), the following administrative penalties shall be used in recommending disposition of complaints involving the following violations:

(1) for intentional alteration or falsification of birth or death certificates; revocation of licensure and an administrative penalty not to exceed \$5,000;

(2) for intentional alteration or falsification of client records or reports, other than birth or death certificates, or misrepresentation of facts:

(A) for the first offense, an administrative penalty not to exceed \$100;

(B) for a second offense, an administrative penalty not to exceed \$200;
and

(C) for subsequent offenses, an administrative penalty not to exceed \$500 per offense, with each day of a continuing violation constituting a separate violation.

(3) for failure to submit, upon request, to the Midwifery Program any records or reports relating to the practice of midwifery required under the Act:

(A) for the first offense, an administrative penalty not to exceed \$100;

(B) for a second offense, an administrative penalty not to exceed \$200;
and

(C) for subsequent offenses, an administrative penalty not to exceed \$500 per offense, with each day of a continuing violation constituting a separate violation;

(4) for violations of Subchapter D of this chapter (relating to Practice of Midwifery):

(A) for the first offense, an administrative penalty not to exceed \$200;

(B) for a second offense, an administrative penalty not to exceed \$400;
and

(C) for a subsequent offense:

(i) an administrative penalty not to exceed \$5,000 per offense, with each day of a continuing violation constituting a separate violation; and/or

(ii) license revocation;

(5) for practicing midwifery without a license, with a lapsed license, or while licensure has been suspended or revoked, the Midwifery Board may request that the attorney general or a district, county, or city attorney institute a civil action in district court to collect a civil penalty not to exceed \$250 per offense, with each day of a continuing violation constituting a separate violation;

(6) for procuring or renewing a license through fraud:

(A) denial of license; and/or

(B) an administrative penalty not to exceed \$5000 per offense, with each day of a continuing violation constituting a separate violation;

(7) for failure to practice midwifery in a manner consistent with public health and safety:

(A) denial of license;

(B) suspension of license; or

(C) revocation of license;

(8) for all other violations of the Act and/or rules not covered by this subsection: disciplinary sanctions determined on a case by case basis.

(c) Failure by a midwife to practice midwifery in a manner consistent with public health and safety shall include, but shall not be limited to:

(1) making deceptive or fraudulent representations in the practice of midwifery, including, but not limited to false claims of proficiency in any field;

(2) mistreating a client, including, but not limited to:

(A) verbal or physical abuse of client;

(B) abandonment immediately before or during labor, or immediately after delivery; or

(C) repeated failure to appear at scheduled appointments without canceling, except in an emergency situation;

(3) exploiting the client and/or her family by engaging in a sexual relationship or misconduct during the provision of midwifery care;

(4) using or maintaining a work area, equipment, or clothing that is unsanitary, except in an emergency situation;

(5) failing to supervise midwifery students or apprentices in his/her charge effectively;

(6) using fraud in the practice of midwifery, practicing midwifery with gross incompetence, with gross negligence on a particular occasion, or with a pattern of fraud, negligence, or incompetence;

(7) willfully failing to inform or misleading a client who requests the name, mailing address, or telephone number of the Midwifery Program for the purpose of filing a complaint; or

(8) failing to provide a written explanation of charges previously made on a bill or statement in response to the client's written request.

§831.166. Complaint Investigation.

(a) (No change.)

(b) The Midwifery Board shall periodically notify the parties of the status of the complaint until final disposition of the complaint. Notification may be provided electronically through the board's website.

§831.167. Informal Settlement Conferences.

The Complaint Review Committee chair shall conduct the conference. If the chair is absent, the vice-chair shall preside.

(1) (No change.)

(2) Order of presentation. After explaining the purpose of the conference and other related matters, the chair or vice-chair shall state the case number and the nature of the complaint.

(A) – (B) (No change.)

(C) Following review of all evidence and statements, the Complaint Review Committee shall make one of the following recommendations to the Midwifery Board:

(i) closure of the complaint [**due to insufficient evidence**]; or

(ii) (No change.)

(D) (No change.)

§831.168. Formal Hearings.

(a) – (d) (No change.)

§831.169. Disciplinary Action.

(a) Penalties and sanctions. If the Midwifery Board finds that a person has violated the Act and/or rules adopted under the Act or any other law or rule relating to the practice of midwifery in Texas, it shall enter an order imposing one or more of the following:

- (1) denial of the person's application for licensure;
- (2) issuance of a written warning or reprimand;
- (3) limitation or restriction of the midwife's practice for a specified time;
- (4) suspension of the midwife's license for a specified time;
- (5) revocation of the midwife's license;
- (6) required participation by the midwife in counseling and treatment for psychological impairment, or intemperate use of alcohol or drugs;
- (7) required participation by the midwife in one or more education or continuing education programs;
- (8) required practice by the midwife under the direction of a preceptor for a specified period;
- (9) probation of any penalty imposed;
- (10) acceptance of the voluntary surrender of a midwife's license, but without reissuance of license unless the Midwifery Board determines the midwife is competent to resume practice;
- (11) imposition of conditions for reinstatement that the midwife must satisfy before the Midwifery Board reissues a license following suspension, revocation, or voluntary surrender; or
- (12) assessment of an administrative penalty against not to exceed \$5,000 for each violation, with each day of a continuing violation constituting a separate violation.

(b) Failure to cooperate. Failure to provide all records requested by the Midwifery Program in the course of a complaint investigation, without good cause shown, shall constitute grounds for additional disciplinary action.

(c) Failure to comply. Failure to comply with a Midwifery Board order shall constitute grounds for additional disciplinary action.

(d) The Midwifery Board shall deny renewal if required by the Education Code, §57.491 (relating to Defaults on Guaranteed Student Loans).

(e) The Midwifery Board upon receipt of a final court or attorney general's order will suspend a license due to failure to pay child support per the Family Code, Chapter 232.

§831.170. Complaint Disposition and Appeals.

(a) The Midwifery Board may, unless precluded by law or this section, make a disposition of any complaint by agreed order. A proposed agreed order is not effective until the full board has approved the agreed order.

(b) – (c) (No change.)

§831.171. Refunds.

(a) In addition to any other disciplinary action authorized by the Act or this chapter, the Midwifery Board may order a licensed midwife to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) – (c) (No change.)

§831.172. Cease and Desist Order.

(a) (No change.)

(b) A violation of an order under this section constitutes grounds for the imposition of an administrative penalty. Each day a violation continues is a separate violation.

§831.173. Emergency Suspension.

(a) – (b) (No change.)

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings (SOAH) simultaneously with the temporary suspension; and

(2) (No change.)

(d) The SOAH [**State Office of Administrative Hearings**] shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

§831.174. Default Order.

(a) – (d)

(e) This subsection also applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the notice was sent to the party's last known address as shown on the department's records, with no showing of actual receipt by the defaulting party or the defaulting party's agent. In this [**that**] situation, the default procedures described in subsection (c) of this section may be used if there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to the defaulting party's last known address.