



TEXAS MIDWIFERY BOARD MIDWIFERY RULES

22 Texas Administrative Code
Chapters 831.1 - 831.174

Texas Department of State Health Services
Professional Licensing and Certification Unit
Texas Midwifery Board
P.O. Box 149347, Mail Code 1982
Austin, Texas 78714-9347
(512) 834-4523
(512) 834-6677 fax
midwifery@dshs.state.tx.us
<http://www.dshs.state.tx.us/midwife/>

DSHS Publications Number 66-10555
Rev. 11/14

MIDWIFERY RULES

Table of Contents

Section Number & Title	Page Number
<i>SUBCHAPTER A THE BOARD</i>	
§831.1 Introduction	1
§831.2 Definitions	1
§831.3 Midwifery Board	2
§831.4 Board Member Training	3
§831.7 Petition for the Adoption of a Rule	3
<i>SUBCHAPTER B LICENSURE</i>	
§831.11 License Required	4
§831.12 Fees	4
§831.13 Initial Application for Licensure	4
§831.14 License Renewal	5
§831.15 Late Renewal	5
§831.16 Renewal for Retired Midwives Performing Charity Work	6
§831.17 State Midwifery Roster	6
§831.20 Grounds for Denial of Application or Disciplinary Action	6
§831.21 Application or Renewal with Criminal Conviction	7
§831.22 License Surrender	7
§831.23 Application for a New License after Revocation, Suspension, or Surrender	8
§831.24 Request for Criminal History Evaluation Letter	8
831.25 Licensing of Military Service Members, Military Veterans, and Military Spouses	8
<i>SUBCHAPTER C EDUCATION AND EXAMINATION</i>	
§831.31 Education Committee	9
§831.32 Basic Midwifery Education	10
§831.33 Education Course Approval	10
§831.34 Education Course Denial or Revocation of Approval	11
§831.35 Exam Approval, Denial, or Revocation of Approval	12
§831.36 Complaints Concerning Education Courses and Comprehensive Exams	13
§831.37 Jurisprudence Examination	15
§831.40 Continuing Education	15
<i>SUBCHAPTER D PRACTICE OF MIDWIFERY</i>	
§831.51 Standards for the Practice of Midwifery in Texas	16
§831.52 Inter-professional Care	17
§831.57 Termination of the Midwife-Client Relationship	17

§831.58	Transfer of Care in An Emergency Situation	17
§831.60	Prenatal Care	18
§831.65	Labor and Delivery	19
§831.70	Postpartum Care	19
§831.75	Newborn Care During the First Six Weeks After Birth	20
§831.101	Administration of Oxygen	21
§831.111	Eye Prophylaxis	21
§831.121	Newborn Screening	22
§831.131	Informed Choice and Disclosure Statement	22
§831.141	Provision of Support Services	23

SUBCHAPTER E COMPLAINT REVIEW

§831.161	Complaint Review Committee	23
§831.162	Reporting Violations and/or Complaints	23
§831.163	Records of Complaints	24
§831.164	Complaint Categories	24
§831.165	Disciplinary Action and Guidelines	24
§831.166	Complaint Investigation	25
§831.167	Informal Settlement Conferences	26
§831.168	Formal Hearings	26
§831.169	Disciplinary Action	26
§831.170	Complaint Disposition and Appeals	27
§831.171	Refunds	27
§831.172	Cease and Desist Order	27
§831.173	Emergency Suspension	27
§831.174	Default Order	28

SUBCHAPTER A THE BOARD

§831.1 Introduction

- (a) Purpose. This chapter implements the applicable provisions of the Texas Midwifery Act, Texas Occupations Code, Chapter 203; relating to the practice and regulation of direct entry midwifery in Texas.
- (b) Construction. This chapter covers 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 military spouses; 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; inter-professional care definitions; 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.

Source Note: The provisions of this §831.1 adopted to be effective August 1, 1999, 24 TexReg 5707; amended to be effective April 24, 2003, 28 TexReg 3327; amended to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective August 22, 2010, 35 TexReg 7069; amended to be effective March 11, 2013, 38 TexReg 1689

§831.2 Definitions

The following words and terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise.

- (1) Act--The Texas Midwifery Act, Texas Occupations Code, Chapter 203.
- (2) Appropriate health care facility--The Department of State Health Services, a local health department, a public health district, a local health unit or a physician's office where specified tests can be administered and read, and where other medical/clinical procedures normally take place.
- (3) Approved midwifery education courses--The basic midwifery education courses approved by the Midwifery Board.
- (4) Certified nurse-midwife--A registered nurse licensed in Texas, recognized by the Board of Nurse Examiners as an advanced nurse practitioner, and certified by the American College of Nurse-Midwives.
- (5) Code--Texas Health and Safety Code.
- (6) Commissioner--The Commissioner of the Department of State Health Services.
- (7) Department--The Department of State Health Services.
- (8) Executive Commissioner--The Executive Commissioner of the Health and Human Services Commission.
- (9) Health authority--A physician who administers state and local laws regulating public health under the Health and Safety Code, Chapter 121, Subchapter B.
- (10) Local health department--A department of health created by the governing body of a municipality or county under the Health and Safety Code, Chapter 121, Subchapter D.
- (11) Local health unit--A division of a municipality or county government that provides limited public health services as provided by the Health and Safety Code, §121.004.
- (12) Midwife--A person who practices midwifery under the Texas Midwifery Act and has met the requirements and standards of the Midwifery Board in these sections.
- (13) Midwifery--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 newborn care.

- (14) Midwifery Board--The Midwifery Board appointed by the Commissioner.
- (15) Newborn care--The care of a child for the first six weeks of the child's life.
- (16) Normal childbirth--The labor and vaginal delivery at or close to term (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.
- (18) Postpartum care--The care of a woman for the first six weeks after the woman has given birth.
- (19) Program--The department's midwifery program.
- (20) Public health district--A district created under the Health and Safety Code, Chapter 121, Subchapter E.
- (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 in Chapter 193 (relating to Standing Delegation Orders) and §831.52 of this title (relating to Inter-professional Care).

Source Note: The provisions of this §831.2 adopted to be effective August 1, 1999, 24 TexReg 5707; amended to be effective April 24, 2003, 28 TexReg 3327; amended to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.3 Midwifery Board

- (a) Membership. Members are appointed by the Commissioner in accordance with the composition specified by the 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 unexcused absence from a regularly scheduled meeting shall be grounds for membership termination by the board.
- (b) Officers. Midwifery Board officers shall consist of a chair from one of the public interest members and vice-chair from any of the other members. The chair is designated by the Commissioner. The vice-chair is selected by the Midwifery Board as the term of appointment expires or a vacancy otherwise created. The chair shall serve at the pleasure of the Commissioner. The vice-chair shall serve a two-year term and shall be eligible for re-election for one additional term. The chair shall be the presiding officer of the Midwifery Board. The vice-chair shall assume the authority and duties of the chair in his/her absence.
- (c) Terms of office. The members of the Midwifery Board serve for staggered terms of six consecutive years, with the terms of three members expiring on January 31st of each odd numbered year.
- (d) Meetings.
 - (1) Frequency. The Midwifery Board shall meet at least semi-annually and at other times when called by the Midwifery Board or the Commissioner. Notice of the time, date, place and purpose of regular meeting shall be provided to the members by mail; by e-mail; or by telephone, at least seven days in advance of each meeting.
 - (2) Quorum. A majority of the Midwifery Board's members constitutes a quorum for the transaction of business at any meeting. A majority is defined as more than one-half of the membership. The Midwifery Board may act only by majority vote of its members present and voting. Each member shall be entitled to one vote. Proxy votes shall not be allowed.
 - (3) Subcommittees. The subcommittees of the Midwifery Board shall be appointed only from the membership by the chair with such powers and responsibilities as shall be delegated to them by the chair.
 - (4) The Midwifery Board chair may convene ad hoc working groups consisting of board members, licensed midwives, consumers, and other stakeholders, as necessary.
 - (5) Parliamentary procedure. Parliamentary procedures for all Midwifery Board or subcommittee meetings shall be conducted in accordance with the latest edition of Robert's Rules of Order. In case of a tie vote, the chair's vote will be the tie breaker.
 - (6) Minutes. Minutes of all Midwifery Board meetings shall be prepared and transmitted to the members for their review prior to subsequent meetings.
 - (7) Public participation. All requests from the public to participate in Midwifery Board meetings shall be submitted to the chair. He or she may approve participation and may limit, as necessary, the time for each participant to address the Midwifery Board. Written comments are encouraged, and may be submitted to the Midwifery Board for its consideration.
 - (8) Travel Reimbursement. Each Midwifery Board member is entitled to receive regular per diem and travel allowances as authorized for state employees in accordance with the rate established in the current general appropriations act.
 - (9) Texas Open Meetings Act. All meetings of the Midwifery Board shall be announced and conducted in accordance with the Texas Open Meetings Act, Government Code, Chapter 551.

Source Note: The provisions of this §831.3 adopted to be effective August 1, 1999, 24 TexReg 5707; amended to be effective April 24, 2003, 28 TexReg 3327; amended to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.4 Board Member Training

- (a) A person who is appointed to and qualifies for office as a member of the Midwifery Board may not vote, deliberate, or be counted as a member in attendance at a meeting of the Midwifery Board until the person completes a training program that complies with this section.
- (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) the results of the most recent formal audit of the Midwifery Board;
 - (3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and
 - (4) any applicable ethics policies adopted by the Midwifery Board or the Texas Ethics Commission.
- (c) A person appointed to the Midwifery Board is entitled to reimbursement, as provided by the current general appropriations act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.
-

Source Note: The provisions of this §831.4 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.7 Petition for the Adoption of a Rule

- (a) Purpose. The purpose of this section is to delineate the procedures of the board for the submission, consideration, and disposition of a petition to the board to adopt a rule.
- (b) Submission of the petition.
- (1) Any person may petition the board to adopt a rule.
 - (2) The petition shall be in writing; contain the petitioner's name, address, and organization, if any; and describe the rule and the reason for it; however, if the Midwifery Program Director determines that further information is necessary to assist the board in reaching a decision, the Midwifery Program Director may require that the petitioner resubmit the petition and that it contain:
 - (A) a brief explanation of the proposed rule;
 - (B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;
 - (C) a statement of the statutory or other authority under which the rule is to be promulgated; and
 - (D) the public benefits anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.
 - (3) The Midwifery Program Director may refuse to accept a petition which does not contain the information in paragraph (2) of this subsection or the information in paragraph (2)(A) - (D) of this subsection if the Midwifery Program Director determines that the latter information is necessary.
 - (4) The petition shall be mailed or delivered to the Texas Midwifery Board, Department of State Health Services, Mail Code 1982 P.O. Box 149347, Austin, Texas 78714-9347.
- (c) Consideration and disposition of the petition.
- (1) Except as otherwise provided in subsection (d) of this section, the Midwifery Program Director shall submit an accepted petition to the board for its consideration and disposition.
 - (2) Within 60 days after receipt of an accepted petition, the board shall deny the petition or institute rule-making procedure in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, Subchapter B. The board may deny parts of the petition and/or institute rulemaking procedures on parts of the petition.
 - (3) If the board denies the petition, the Midwifery Program Director shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.
 - (4) If the board initiates rulemaking procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.
- (d) Subsequent petitions to adopt the same or similar rule. All initial accepted petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsections (b) and (c) of this section. The Midwifery Program Director may refuse to forward to the board for consideration any subsequent petition for the adoption of the same or a similar rule submitted within six months after the date of the initial petition.
-

Source Note: The provisions of this §831.7 adopted to be effective August 1, 1999, 24 TexReg 5707; amended to be effective April 24, 2003, 28 TexReg 3327; amended to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.11 License Required

- (a) In order for an individual to legally practice midwifery in Texas, she/he must be currently licensed by the Midwifery Program.
- (b) A midwife license shall be valid for a renewal period of two years except for initial licensure.
- (c) A midwife's initial license shall be valid from the date issued until March 1 of the following renewal period.

Source Note: The provisions of this §831.11 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.12 Fees

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

- (1) Application fee--\$275.
- (2) Renewal fee--\$550 for each two-year renewal period.
- (3) Late processing fee:
 - (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) Retired midwife renewal fee--\$275.
- (6) Retired midwife reinstatement fee--\$275.
- (7) Jurisprudence examination fee--\$35.
- (8) Education course initial application fee--\$150.
- (9) Education course site visit fee--\$500.
- (10) Criminal history evaluation letter fee--\$50.
- (11) For all applications and renewal applications, the department is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.
- (12) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by texas.gov. to recover costs associated with application and renewal application processing through texas.gov.

Source Note: The provisions of this §831.12 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective August 22, 2010, 35 TexReg 7069; amended to be effective March 11, 2013, 38 TexReg 1689

§831.13 Initial Application for Licensure

- (a) Initial licensure. An individual may apply for licensure as a midwife at any time during the year by submitting the following to the Midwifery Program:
 - (1) a completed licensure application form which shall contain:
 - (A) specific information regarding personal data, social security number, birth date, other licenses held, and misdemeanor or felony convictions;
 - (B) the date of the application;
 - (C) a statement that the applicant has read Occupations Code, Chapter 203 (Act), and these rules and agrees to abide by them;
 - (D) a statement that the information in the application is truthful and that the applicant understands that providing false and misleading information on items which are material in determining the applicant's qualifications may result in the voiding of the application, or denial or the revocation of any license issued; and
 - (E) the signature of the applicant which has been dated; and
 - (F) any other information required by the Board.
 - (2) proof of:
 - (A) satisfactory completion of a mandatory basic midwifery education course approved by the Midwifery Board and the North American Registry of Midwives (NARM) exam or any other comprehensive exam approved by the Midwifery Board;
 - (B) certified professional midwife (CPM) certification by NARM and satisfactory completion of a continuing education course covering the current Texas Midwifery Basic Information and Instructors Manual; or
 - (C) satisfactory completion of a basic midwifery education course accredited by the Midwifery Education Accreditation Council (MEAC); a continuing education course covering the current Texas Midwifery Basic Information

and Instructors Manual; and the North American Registry of Midwives (NARM) exam or any other comprehensive exam approved by the Midwifery Board;

(3) proof of current cardiopulmonary resuscitation (CPR) certification for health care providers by the American Heart Association; equivalent certification for the professional rescuer from the Red Cross; equivalent certification for healthcare and professional rescuer from the National Safety Council; or equivalent certification issued by any provider of CPR certification for health care providers currently accepted by the department's Office of EMS/Trauma Systems Coordination;

(4) proof of current certification for neonatal resuscitation, §§1 - 4, from the American Academy of Pediatrics;

(5) proof of satisfactory completion of training in the collection of newborn screening specimens or an established relationship with another qualified and appropriately credentialed health care provider who has agreed to collect newborn screening specimens on behalf of the applicant;

(6) a nonrefundable application fee; and

(7) proof of passing the jurisprudence examination approved by the Midwifery Board. The jurisprudence examination must have been taken no more than one year prior to the date of application.

(b) Initial licensure after interim of more than four years. A midwife seeking initial licensure who has not become licensed within four years of completing a basic midwifery education course approved by the Midwifery Board or accredited by MEAC shall in addition provide proof of having completed at least 40 contact hours of approved midwifery continuing education within the year preceding the application, which shall be based upon a review of:

(1) the current Texas Midwifery Basic Information and Instructors Manual; and

(2) the current Midwives Alliance of North America (MANA) Core Competencies and Standards of Practice.

Source Note: The provisions of this §831.13 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.14 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) a completed license renewal application form which shall require the provision of the preferred mailing address and telephone number, and a statement of all misdemeanor and felony offenses for which the licensee has been convicted, along with any other information required by the Board;

(2) proof of completion of at least 20 contact hours of approved midwifery education since March 1 of the previous two-year renewal period;

(3) proof of current CPR certification for health care providers by the American Heart Association; equivalent certification for the professional rescuer from the Red Cross; equivalent certification for healthcare and professional rescuer from the National Safety Council; or equivalent certification issued by any provider of CPR certification for health care providers currently accepted by the department's Office of EMS/Trauma Systems Coordination;

(4) proof of current certification for neonatal resuscitation, §§1 - 4, from the American Academy of Pediatrics;

(5) a nonrefundable renewal fee; and

(6) proof of passing the jurisprudence examination approved by the Midwifery Board in the four years preceding renewal.

Source Note: The provisions of this §831.14 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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) an additional nonrefundable late processing fee.

(b) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining an initial license.

Source Note: The provisions of this §831.15 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.16 Renewal for Retired Midwives Performing Charity Work

- (a) For the purposes of this subsection, a "retired midwife" is defined as:
- (1) currently licensed as a midwife in Texas;
 - (2) over the age of 55; and
 - (3) not currently employed in a health care field.
- (b) For the purposes of this subsection, "voluntary charity care" is defined as midwifery care provided:
- (1) without compensation; and
 - (2) with no expectation of compensation.
- (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) For subsequent renewals, a retired midwife who is not practicing midwifery in Texas except for providing voluntary charity care may renew his or her midwifery license by submitting all the items required by §831.14 of this title except for:
- (1) five hours of approved midwifery continuing education per year of renewal under this subsection, not ten hours; and
 - (2) the retired midwife renewal fee, not the regular renewal fee.
- (e) In order to apply for renew late renewal under this subsection, a retired midwife who is not practicing midwifery in Texas, except for providing voluntary charity care, may renew his or her midwifery license by submitting all the items required by §831.15 of this title (relating to Late Renewal) except for:
- (1) five hours of continuing education per year of renewal under this subsection, not ten hours; and
 - (2) the retired midwife renewal fee, not the regular renewal fee.
- (f) A retired midwife who has previously renewed under this subsection, and then subsequently seeks to return to employment in the active practice of midwifery in Texas, must either:
- (1) be currently licensed under this subsection but not due for renewal, and submit the following items to the Midwifery Program:
 - (A) ten hours of continuing education, taken in the 12 months preceding the application;
 - (B) the retired midwife reinstatement fee; and
 - (C) a written request to return his or her license to active status; or
 - (2) be currently licensed under this subsection and when billed for renewal, submit all the items required by §831.14 of this title with a written request to return his or her license to active status; and
 - (3) receive approval from the Midwifery Program prior to returning to active practice.

Source Note: The provisions of this §831.16 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.17 State 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.

Source Note: The provisions of this §831.17 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.20 Grounds for Denial of Application or Disciplinary Action

The following are 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 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.

Source Note: The provisions of this §831.20 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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) The Midwifery Board shall consider the following factors:

- (A) the nature and seriousness of the crime or the reason the applicant's probation was revoked;
- (B) any relationship between the crime and the practice of midwifery;
- (C) whether licensure might offer the applicant an opportunity to engage in the same or similar criminal activity as that for which the applicant was previously convicted; and
- (D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of midwifery.

(3) The Midwifery Board, in determining the present fitness of a person who has been convicted of a felony or a misdemeanor involving moral turpitude, shall consider:

- (A) the age of the applicant when the crime was committed;
 - (B) the amount of time that has elapsed since the applicant's conviction;
 - (C) the applicant's conduct and work history prior to and following the conviction;
 - (D) evidence of the applicant's progress toward rehabilitation while incarcerated, on probation, or following release;
- and
- (E) other evidence of the person's present fitness, including letters of recommendation from:
 - (i) prosecutorial, law enforcement, probation, and correctional officers;
 - (ii) the sheriff or chief of police in the community where the applicant resides; and
 - (iii) other persons.

(4) Specific offenses for which a conviction would constitute grounds for the Midwifery Board to take action under Occupations Code, §53.021, because these criminal offenses indicate an inability or a tendency to be unable to practice midwifery in a manner consistent with public health, safety or welfare include:

- (A) a violation of the Act;
- (B) an offense related to misconduct or fraud in the provision of health care or which occurred in a health care facility;
- (C) an offense involving the misuse or abuse of drugs or alcohol;
- (D) an offense related to falsification of, or tampering with, a government document;
- (E) an offense related to birth certificate fraud, or attempting to obtain citizenship through fraud;
- (F) a misdemeanor involving deceptive business practices;
- (G) the offense of assault or sexual assault;
- (H) the felony offense of theft; or
- (I) any other misdemeanor or felony which would indicate an inability or a tendency to be unable to practice midwifery in accordance with Subchapter D of this chapter (relating to Practice of Midwifery).

Source Note: The provisions of this §831.21 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.22 License Surrender

(a) A midwife may surrender his or her license prior to its expiration for the current period by mailing the original license certificate and current renewal card back to the Midwifery Program together with a signed statement of his or her intent to surrender the license.

(b) Surrender of license by a midwife after receipt of notification from the Midwifery Program that a complaint against the midwife is being investigated shall not deprive the Midwifery Board of jurisdiction in any disciplinary action which may result from said investigation.

(c) The Midwifery Board may enter any disciplinary order authorized by the Act or this subchapter to resolve a complaint against a midwife who has surrendered his or her license after receipt of notification from the Midwifery Program that a complaint is being investigated.

Source Note: The provisions of this §831.22 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.23 Application for a New 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 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 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 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;

(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.

Source Note: The provisions of this §831.23 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.24. Request for Criminal History Evaluation Letter.

(a) In accordance with Occupations Code, §53.102, a person may request the board to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the board, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The board has the same authority to investigate a request submitted under this section and the requestor's eligibility that the board has to investigate a person applying for a license.

(d) If the board determines that a ground for ineligibility does not exist, the board shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the board received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the board determines that the requestor is ineligible for a license, the board shall issue a letter setting out each basis for potential ineligibility and the board's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the board received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to, but not disclosed by, the requestor or not reasonably available to the board at the time the letter is issued, the board's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

Source Note: The provisions of this §831.24 adopted to be effective August 22, 2010, 35 TexReg 7069; amended to be effective March 11, 2013, 38 TexReg 1689

§831.25 Licensing of Military Service Members, Military Veterans, and Military Spouses

(a) This section sets out licensing procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section:

(1) "Military service member" means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(2) "Military spouse" means a person who is married to a military service member who is currently on active duty.

(3) "Military veteran" means a person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(b) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(c) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(d) The board's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(e) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(f) An applicant who is a military spouse who holds a current license issued by another jurisdiction that has substantially equivalent licensing requirements shall complete and submit an application form and fee. The board shall issue a license to a qualified applicant who holds such a license as soon as practicable and the renewal of the license shall be in accordance with subsection (i) of this section.

(g) In accordance with Occupations Code, §55.004(c), the Midwifery Program 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.

(h) A military spouse 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.

(i) If the board issues an initial license to an applicant who is a military spouse in accordance with subsection (f) of this section, the board shall assess whether the applicant has met all licensing requirements of this state by virtue of the current license issued by another jurisdiction. The board shall provide this assessment in writing to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide proof of completion at the time of the first application for license renewal. A license shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.

Source Note: The provisions of this §831.25 adopted to be effective March 11, 2013, 38 TexReg 1689; amended to be effective November 23, 2014, 39 TexReg 9016

SUBCHAPTER C EDUCATION AND EXAMINATION

§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 consist of members of the Midwifery Board:

(1) two licensed midwives, one of whom shall serve as chair and the other of whom shall serve as vice-chair;

(2) a physician; and

(3) a public interest member.

(b) The Midwifery Board chair may convene ad hoc working groups consisting of committee members, licensed midwives, and other interested individuals, as necessary.

(c) All meetings and proceedings of the Education Committee shall be open to the public.

Source Note: The provisions of this §831.31 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.32 Basic Midwifery Education

- (a) The Midwifery Program staff shall consider for approval only courses which have a course supervisor/administrator and site in Texas.
- (b) Mandatory basic midwifery education shall:
- (1) be offered to ensure that only trained individuals practice midwifery in Texas;
 - (2) be offered by any individual or organization meeting the requirements for course approval established by this subsection;
 - (3) include a didactic component which shall:
 - (A) be based upon and completely cover the most current Core Competencies and Standards of Practice of the Midwives Alliance of North America (MANA) and the current Texas Midwifery Basic Information Manual;
 - (B) prepare the student to apply for certification by North American Registry of Midwives (NARM); and
 - (C) include a minimum of 250 hours course work.
 - (4) be supervised and conducted by a course supervisor/administrator who shall:
 - (A) be responsible for all aspects of the course; and
 - (B) have two years of experience in the independent practice of midwifery, nurse-midwifery or obstetrics; and
 - (C) have been primary care giver for at least 75 births including provision of prenatal, intrapartum, and postpartum care; and
 - (D) have met initial licensure requirements; or
 - (E) be a Certified Professional Midwife (CPM); or
 - (F) be American College of Nurse Midwives (ACNM) certified; or
 - (G) be a licensed physician in Texas actively engaged in the practice of obstetrics.
 - (5) include didactic curriculum instructors who:
 - (A) have training and credentials for the course material they will teach; and
 - (B) are approved by the course supervisor/administrator.
 - (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) serving as an active participant in attending 20 births;
 - (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 3 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 4 prenatal visits, birth, newborn exam and one postpartum exam;
 - (C) serving as the primary midwife, under supervision, in performing:
 - (i) 75 prenatal exams, including at least 20 initial history and physical exams;
 - (ii) 20 newborn exams; and
 - (iii) 40 postpartum exams.
 - (7) include preceptors who are approved by the course supervisor/administrator and shall be:
 - (A) licensed midwives;
 - (B) certified professional midwives;
 - (C) certified nurse midwives; or
 - (D) physicians licensed in the United States and actively engaged in the practice of obstetrics.
- (c) Individuals enrolled as students in an approved midwifery course must possess:
- (1) a high school diploma or the equivalent; and
 - (2) a current cardiopulmonary resuscitation (CPR) certificate for health care providers from the American Heart Association; an equivalent CPR certificate for the professional rescuer from the Red Cross; equivalent certification for healthcare and professional rescuer from the National Safety Council; or equivalent certification issued by any provider of CPR certification for health care providers currently accepted by the department's Office of EMS/Trauma Systems Coordination.

Source Note: The provisions of this §831.32 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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) course outline;
 - (B) course curriculum with specific content references to:
 - (i) MANA Core Competencies;

- (ii) NARM Written Test Specifications;
- (iii) NARM Skills Assessment Test Specifications;
- (iv) Texas Midwifery Basic Information and Instructor Manual; and
- (v) protocol writing, adaptation and revision.
- (C) identification of didactic and preceptorship teaching sites;
- (D) a financial statement or balance sheet (within the last year) for the course supervisor/administrator or course owner and disclosure of any bankruptcy within the last five years; and
- (E) written policies to include:
 - (i) tuition schedule, other charges, and cancellation and refund policy, including the right of any prospective student to cancel his/her enrollment agreement within 72 hours after signing the agreement and receive a full refund of any money which may have paid;
 - (ii) student attendance, progress, and grievance policies;
 - (iii) rules of operation and conduct of school personnel;
 - (iv) requirements for state licensure;
 - (v) disclosure of approval status of course;
 - (vi) maintenance of student files; and
 - (vii) reasonable access for non-English speakers and compliance with federal and state laws on accessibility.
- (2) Student files shall be maintained for a minimum of five years and shall include:
 - (A) evidence that the entrance requirements have been met;
 - (B) documentation demonstrating completion of didactic and clinical course work; and
 - (C) copies of any financial agreements between the student and the school.
- (3) The Midwifery Program staff and Education Committee chair shall review each course application submitted for approval. If an application for initial approval meets all of the requirements specified in this paragraph, a one-year provisional approval will be granted. An on-site evaluation of the course shall be scheduled. The evaluation shall be conducted by a member of the Midwifery Program staff and a licensed midwife within the provisional year. The midwife member of the evaluation team shall be appointed by the chair of the Education Committee and shall not be the supervisor, didactic instructor, or preceptor of another basic midwifery education course in the same geographic area. The site visit will include the following:
 - (A) an inspection of the course's facilities;
 - (B) a review of its teaching plan, protocols, and teaching materials;
 - (C) a review of didactic and preceptorship instruction;
 - (D) interviews with staff and students; and
 - (E) a review of student, staff and preceptor files, to include coursework, protocols, and financial records.
- (4) A non-refundable site visit fee shall be assessed for each course approval site visit.
- (5) The review team's written report shall conclude with a recommendation to the Education Committee for approval or denial of the course.
- (6) The Education Committee shall evaluate the application and all other pertinent information, including any complaints received and the on-site review team's report and recommendation.
- (7) The Midwifery Board shall consider the application and the recommendations of the Education Committee and shall render a final decision during the provisional year. The decisions of the Education Committee and Midwifery Board shall be based upon the criteria specified in this subsection.
- (8) Each applicant shall be notified of the Midwifery Board's decision in writing within ten working days. If an application is denied, the notification shall specify the reason(s) for denial.
- (b) Course reciprocity. A basic midwifery education course which is currently accredited by the Midwifery Education Accreditation Council (MEAC) shall be deemed approved under this subsection upon submission of evidence of such accreditation.
- (c) Duration of course approval.
 - (1) The Midwifery Board shall approve courses for a three-year period.
 - (2) Course supervisors/administrators shall reapply for approval six months prior to expiration.
- (d) Course changes. Any substantive change(s) in the course or its content shall be submitted to the Midwifery Program staff prior to the change(s) if known in advance or within ten working days after change(s). The Midwifery Program staff shall notify the Education Committee chair. The Midwifery Board may reconsider the status of any course which has undergone substantive changes should the course no longer meet the requirements of this subchapter.

Source Note: The provisions of this §831.33 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.34 Education Course Denial or Revocation of Approval

(a) Appeal of course denial. An appeal of a notification of a denial must be submitted in writing to the chair of the Midwifery Board through the Midwifery Program within 21 working days of the applicant's receipt of the notice. Upon

receipt of the appeal, the appellant will be placed on the agenda of the next scheduled meeting of the Midwifery Board, at which time the appellant may appear and the Board shall render a decision on the appeal.

(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) the course supervisor, instructor(s), or preceptor(s) do not have the qualifications required by this subsection;
- (3) course approval was obtained by fraud or deceit;
- (4) the course supervisor has falsified course registration, attendance, completion and/or other records; or
- (5) continued approval of the course is not in the public interest as defined by the Midwifery Board.

(c) Notice and hearings required under this subsection will be conducted 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.

(d) An administrative law judge (ALJ) appointed by the SOAH shall preside over and conduct the hearing. A formal hearing shall be held in Travis County, Texas, unless otherwise determined by the ALJ or upon agreement of the parties.

(e) After the hearing, the ALJ shall prepare a proposal for decision and provide copies of same to all parties to the hearing.

(f) All proposals for decision shall be referred to the Midwifery Board for final decision.

Source Note: The provisions of this §831.34 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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) copy of exam;

(ii) copy of all exam information and preparation materials, including sample test booklet(s);

(iii) evidence that the written portion of the examination has been validated by an independent professional, as required by the Act, §11(b);

(iv) references to the MANA Core Competencies included in the exam;

(v) identification of proposed test sites;

(vi) a certified audit (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) written policies to include:

(I) charge for exam administration, other charges, and cancellation and refund policy;

(II) confidentiality of individual exam scores;

(III) administration and grading of exam;

(IV) requirements for test sites and proctors;

(V) disclosure of approval status of exam;

(VI) complaint procedures;

(VII) maintenance of exam files; and

(VIII) reasonable access for non-English speakers and compliance with federal and state laws on accessibility.

(B) Separate exam files for each administration of the exam shall be maintained for a minimum of five years and shall include:

(i) evidence of identity of all test takers, and of all proctors;

(ii) documentation concerning exam administration procedures;

(iii) copies of any financial agreements related to the administration of the exam;

(iv) copies of any complaints received;

(v) copies of exam(s) administered; and

(vi) originals of all scored exams.

(C) The Midwifery Program staff and Education Committee chair shall review each exam application submitted for approval. If an application for approval meets all of the requirements specified in this paragraph, it will be forwarded to the Education Committee within 90 days.

(D) The Education Committee shall evaluate the application and recommend either approval or denial of the application to the Midwifery Board.

(E) The Midwifery Board shall consider the application and the recommendations of the Education Committee and shall render a final decision.

(F) Each applicant shall be notified of the Midwifery Board's decision in writing within ten working days. If an application is denied, the notification shall specify the reason(s) for denial.

(2) Appeal of exam denial. An appeal of a notification of a denial must be submitted in writing to the chair of the Midwifery Board within 21 working days of the applicant's receipt of the notice. The appellant may appear at the next scheduled meeting of the Midwifery Board, at which the Board shall render a decision on the appeal.

(3) Duration of exam approval.

(A) The Midwifery Board shall approve exams for a three-year period;

(B) Any revisions to the exam must be approved according to the requirements of this subsection; and

(C) Course supervisors/administrators or associations of midwifery shall reapply for approval six months prior to expiration.

(4) Exam changes/revisions. Any substantive change(s) in, or revisions to, the exam, its administration, or any of the policies associated with it, shall be submitted to the Midwifery Program staff prior implementation of the change(s), along with a explanation for the proposed change(s). The Midwifery Program staff shall notify the Education Committee chair. The Midwifery Board may reconsider the status of any exam in which substantive changes have been made.

(A) The Education Committee may request and consider any relevant information, including exam files, when reconsidering course approval.

(B) The Education Committee shall forward its recommendations to the Midwifery Board.

(5) Revocation of exam approval.

(A) The Midwifery Board may revoke the approval of an exam after notifying the course supervisor/administrator or course owner or midwifery association of its intended action and the opportunity for an appeal, if the Midwifery Board determines that:

(i) the exam or the course/association who submitted it for approval no longer meets the standards established by this subsection;

(ii) exam approval was obtained by fraud or deceit;

(iii) records required by this subsection have been falsified or are incomplete;

(iv) exam files or other relevant information have been withheld from the Midwifery Board or Education Committee despite a written request; or

(v) continued approval of the exam is not in the public interest as defined by the Midwifery Board.

(B) Each course supervisor/administrator or midwifery association shall be notified of the Midwifery Board's decision in writing within ten working days. If an application is denied, the notification shall specify the reason(s) for denial.

(C) Notice and hearings required under this subsection will be conducted 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.

(D) An administrative law judge (ALJ) appointed by the SOAH shall preside over and conduct the hearing. A formal hearing shall be held in Travis County, Texas, unless otherwise determined by the ALJ or upon agreement of the parties.

(E) After the hearing, the ALJ shall prepare a proposal for decision and provide copies of same to all parties to the hearing.

(F) All proposals for decision shall be referred to the Midwifery Board for final decision.

(6) Complaints. If a complaint cannot be resolved by the complaint process associated with the exam, the complainant may file a complaint against the exam or the course supervisor/administrator or course owner or midwifery association with the Education Committee in accordance with the procedures in §831.36 of this title (relating to Complaints Concerning Education Courses and Comprehensive Exams).

Source Note: The provisions of this §831.35 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.36 Complaints Concerning Education Courses and Comprehensive Exams

(a) Report of a complaint. Complaints may be accepted by the Midwifery Program by telephone, in person, or in writing from any person or agency alleging violations of this section.

(1) The Midwifery Program staff shall mail a letter and complaint form to the complainant within ten working days of being notified of the complaint. The complaint form shall request at least the following information:

(A) the name, address, and telephone number of complainant (optional);

(B) the name, address, and telephone number of course supervisor/administrator or course owner or midwifery association that is the subject of the complaint;

(C) a complete statement of the complaint, including date(s), time(s), and location(s) of event(s);

(D) the name, address, and telephone number of any witnesses; and

(E) a description of any other reporting, filing, or attempted resolution of the complaint.

(2) The complaint review process begins when the completed complaint form is received by the Midwifery Program and assigned a case number, and the subject of the complaint is determined to be a course or exam approved under this section.

(3) If the complaint form includes the complainant's name and address, the complainant shall be notified in writing of the Midwifery Program's receipt of the complaint form within ten working days.

(b) Records of complaints. The Midwifery Program shall maintain an information file about each complaint. The information file shall be kept current and shall contain, if applicable:

- (1) the written complaint;
- (2) a record of all persons contacted in relation to the complaint;
- (3) client records;
- (4) other requested records;
- (5) a summary of findings;
- (6) an explanation of the legal basis and the Midwifery Board's reason for dismissing a complaint;
- (7) sanctions imposed; and
- (8) other relevant information.

(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) request all relevant records necessary to conduct an investigation of the complaint;
- (3) interview the complainant, the respondent, and any witnesses;
- (4) review and evaluate all information received;
- (5) forward the complaint to any other agencies or organizations which may also have jurisdiction and/or refer the complainant to said agencies or organizations;
- (6) present each complaint to the Education Committee; and
- (7) notify the course supervisor/administrator or course owner or midwifery association by certified mail of the date and time of the Education Committee at which the complaint will be presented, at least 30 days in advance.

(d) Settlement conference. The Education Committee chair or, in his/her absence, the vice-chair, will preside over and conduct the conference.

(1) On the day and time designated for the conference, the chair or vice-chair shall:

- (A) state the purpose of and the legal authority for the conference; and
- (B) outline the procedure and order of presentation to be followed.

(2) Order of presentation. After making the necessary introductory and explanatory remarks, the chair or vice-chair shall state the case number and the nature of the complaint.

(A) The Education Committee shall review all available evidence from the investigation, including any statements from the complainant and the course supervisor/administrator or course owner or midwifery association. The Education Committee may question any person present regarding relevant information. Whether or not the complainant or course supervisor/administrator or course owner or midwifery association is present, the settlement conference shall proceed with the information on hand.

(B) Evidence and statements shall be reviewed by the Education Committee and one of the following recommendations made to the Midwifery Board:

- (i) close the complaint file due to insufficient evidence or no violation; or
- (ii) enter an agreed order.

(C) Complaints not resolved by settlement conference shall be referred for a hearing.

(e) Hearings.

(1) All administrative hearings under this section shall be conducted 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.

(2) An administrative law judge (ALJ) appointed by the SOAH shall preside over and conduct the hearing. A formal hearing shall be held in Travis County, Texas, unless otherwise determined by the ALJ or upon agreement of the parties.

(3) After the hearing, the ALJ shall prepare a proposal for decision and provide copies of same to all parties to the hearing.

(4) All proposals for decision shall be referred to the Midwifery Board for final decision.

(f) Guidelines for sanctions. The Midwifery Board/Education Committee shall consider the following factors in imposing sanctions:

- (1) the severity of the offense;
- (2) the damage to the public or to the profession of midwifery;
- (3) the number of repetitions of the offense;
- (4) the length of time since date of offense;
- (5) the number of sanctions imposed upon the course supervisor/administrator or course owner or midwifery association;
- (6) the length of time the course or exam has been offered;
- (7) the actual injury, financial or otherwise, suffered by the student(s) or person(s) taking the exam;
- (8) any efforts at rehabilitation or remediation by the course supervisor/administrator or course owner or midwifery association; and
- (9) any other mitigating or aggravating circumstances.

(g) Penalties and Sanctions. If the Midwifery Board finds that a course supervisor/administrator or course owner or midwifery association has violated this subsection, it shall enter an order imposing one or more of the following:

- (1) a written warning or reprimand;
- (2) limitation or restriction of course or exam approval for a specified time;
- (3) suspension of course or exam approval for a specified time;
- (4) revocation of course or exam approval;
- (5) probation of any sanction imposed on the course supervisor/administrator or course owner or midwifery association;
- (6) acceptance by the Midwifery Board of the voluntary surrender of approval and without the opportunity for reinstatement unless the Midwifery Board determines the course supervisor/administrator or course owner or midwifery association is competent to resume offering the course or exam; or
- (7) imposition of conditions for approval that the course supervisor/administrator or course owner or midwifery association must satisfy before the Midwifery Board issues an unrestricted approval.

(h) Failure to cooperate. Failure to provide records requested by the Midwifery Program, without good cause shown, shall be grounds for additional disciplinary action.

(i) Disposition.

(1) Agreed disposition.

(A) The Midwifery Board may, unless precluded by law or this section, make a disposition of any complaint by agreed order.

(B) An agreed disposition is considered a disciplinary order for purposes of reporting under this chapter and of administrative hearings and proceedings by state and federal regulatory agencies regarding the practice and education of licensed midwives. An agreed order is a public record. In civil or criminal litigation, an agreed disposition is a settlement agreement under Texas Rules of Civil Evidence, Rule 408, and Texas Rules of Criminal Evidence, Rule 408.

(2) Closed file. The Midwifery Board may close the complaint file due to insufficient evidence.

Source Note: The provisions of this §831.36 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.37 Jurisprudence Examination

(a) The department shall develop a jurisprudence examination and present it to the Midwifery Board for approval.

(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) The department shall review and update the examination as needed, subject to the approval of the Midwifery Board.

(d) The examination shall be administered in a web-based format through an examination contract, which specifies that applicants for examination must be able to:

(1) pay the examination fee online by credit card; and

(2) receive their examination results electronically immediately upon completion of the examination.

(e) If requested in writing by a person who fails an examination administered under this chapter, the Midwifery Board shall furnish the person with an analysis of the person's performance on the examination.

Source Note: The provisions of this §831.37 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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) Mandatory continuing midwifery education courses support the need for midwives practicing in Texas to maintain current knowledge and skills.

(2) Courses may be offered by any individual or organization that meets the requirements for course approval established by this section.

(3) Course curriculum must provide an educational experience which:

(A) covers new developments in the fields of midwifery or related disciplines; or

(B) reviews established knowledge in the fields of midwifery or related disciplines; and

(C) shall be presented in standard contact hour increments for continuing health education; and

(D) shall provide reasonable access for non-English speakers and comply with federal and state laws on accessibility.

(4) Course coordinators and instructors.

(A) Course coordinators shall obtain course approval, register and certify participant attendance, and provide attendance certificates to participants following the course.

(B) Course instructors shall have training and/or credentials appropriate for the course material they will teach.

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

- (A) satisfy the requirements of paragraph (3)(A) - (C) of this section; and
- (B) are accredited by one of the following accrediting bodies:
 - (i) a professional midwifery association, nursing, social work, or medicine;
 - (ii) a college, a university, or an approved basic midwifery education course;
 - (iii) a nursing, medical, or health care organization;
 - (iv) a state board of nursing or medicine;
 - (v) a department of health; or
 - (vi) a hospital.

Source Note: The provisions of this §831.40 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

SUBCHAPTER D PRACTICE OF MIDWIFERY

§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. Using reasonable skill and knowledge, 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) 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; and
 - (4) 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 within the bounds of the midwifery scope of practice as defined by the Act; and the Texas Midwifery Board Standards for the Practice of Midwifery in Texas.
- (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.

Source Note: The provisions of this §831.51 adopted to be effective April 24, 2003, 28 TexReg 3327; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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.

(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.

Source Note: The provisions of this §831.52 adopted to be effective April 24, 2003, 28 TexReg 3327; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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 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.

Source Note: The provisions of this §831.57 adopted to be effective April 24, 2003, 28 TexReg 3327; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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 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.

Source Note: The provisions of this §831.58 adopted to be effective April 24, 2003, 28 TexReg 3327; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.60 Prenatal Care

(a) Using reasonable skill and knowledge, 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 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 37 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 skill and knowledge.

(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.

Source Note: The provisions of this §831.60 adopted to be effective April 24, 2003, 28 TexReg 3327; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.65 Labor and Delivery

- (a) Using reasonable skill and knowledge, 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, 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 37 weeks);
 - (12) presentation(s) not compatible with spontaneous vaginal delivery;
 - (13) laceration(s) requiring repair beyond the scope of practice 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 skill and knowledge.

Source Note: The provisions of this §831.65 adopted to be effective April 24, 2003, 28 TexReg 3327; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.70 Postpartum Care

- (a) Using reasonable skill and knowledge, 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) Using reasonable skill and knowledge, 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; or
 - (4) any other condition or symptom which could threaten the health of the mother, as assessed by a midwife exercising reasonable 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) any hypertensive disorder, including 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 skill and knowledge.

Source Note: The provisions of this §831.70 adopted to be effective April 24, 2003, 28 TexReg 3327; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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) Using reasonable skill and knowledge, 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 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 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 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 skill and knowledge.

Source Note: The provisions of this §831.75 adopted to be effective April 24, 2003, 28 TexReg 3327; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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 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 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.

Source Note: The provisions of this §831.101 adopted to be effective May 16, 1999, 24 TexReg 3480; amended to be effective April 24, 2003, 28 TexReg 3327; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.111 Eye Prophylaxis

- (a) Each midwife is responsible for administering or causing to be administered to every infant which she or he delivers the necessary eye prophylaxis to prevent ophthalmia neonatorum in accordance with the medications specified by the department in Health and Safety Code, §81.091.
- (b) A midwife must obtain a written exemption from treatment in accordance with Health and Safety Code, §81.009 from any parent who refuses to allow a midwife to administer or cause to be administered eye prophylaxis in accordance with Health and Safety Code, §81.091.

(c) 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.

Source Note: The provisions of this §831.111 adopted to be effective August 1, 1999, 24 TexReg 5707; amended to be effective April 24, 2003, 28 TexReg 3327; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.121 Newborn Screening

(a) Each midwife who assists at the birth of a child is responsible for performing the newborn screening tests according to the Health and Safety Code, Chapters 33 and 34, and 25 Texas Administrative Code §§37.51 - 37.65 (relating to Newborn Screening Program) or making a referral in accordance with this subsection. 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.

Source Note: The provisions of this §831.121 adopted to be effective August 1, 1999, 24 TexReg 5707; amended to be effective April 24, 2003, 28 TexReg 3327; amended to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.131 Informed Choice and Disclosure Statement

As required by the Act, §203.351 (relating to Informed Choice and Disclosure Requirements), the 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.

Source Note: The provisions of this §831.131 adopted to be effective August 1, 1999, 24 TexReg 5707; amended to be effective April 24, 2003, 28 TexReg 3327; amended to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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 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.

Source Note: The provisions of this §831.141 adopted to be effective August 1, 1999, 24 TexReg 5707; amended to be effective April 24, 2003, 28 TexReg 3327; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

SUBCHAPTER E COMPLAINT REVIEW

§831.161 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) The Complaint Review Committee shall consist of the following Midwifery Board members:
 - (A) two licensed midwives, one of whom shall serve as the chair and the other of whom shall serve as vice-chair;
 - (B) a physician; and
 - (C) a public interest member.
- (2) The Midwifery Board chair may appoint ad hoc working groups consisting of committee members, licensed midwives, and other persons as necessary.
- (3) During the investigation and consideration of a complaint, the Complaint Review Committee shall schedule an informal conference to discuss the investigation and to consider any recommendations for disposition of the complaint. At no time shall the Complaint Review Committee or Midwifery Board disclose the identity of the midwife's client.

Source Note: The provisions of this §831.161 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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 chapter, 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;
 - (E) the Midwifery Program assigns a case number; and

(F) the Midwifery Board and the Complaint Review Committee may waive the time limitation in subparagraph (D) of this paragraph in cases of birth certificate misconduct 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.

Source Note: The provisions of this §831.162 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.163 Records of Complaints

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

- (1) a copy of the complaint;
- (2) record of all persons contacted in relation to the complaint;
- (3) client records;
- (4) other records requested during the investigation;
- (5) a summary of findings;
- (6) basis for recommending closure of the complaint;
- (7) any disciplinary action taken; and
- (8) other relevant information.

Source Note: The provisions of this §831.163 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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) The final complaint category shall be approved by the Complaint Review Committee after completion of the investigation.

Source Note: The provisions of this §831.164 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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.

Source Note: The provisions of this §831.165 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.166 Complaint Investigation

(a) The Midwifery Program Director or director's designee shall:

- (1) notify the midwife of the complaint by certified mail;
- (2) obtain all relevant midwifery records and medical records necessary to conduct an investigation of a complaint without the necessity of consent of the midwife's client;
- (3) interview the complainant, the respondent, and any witnesses;
- (4) obtain any available peer review reports;
- (5) review and evaluate all information received;
- (6) forward complaint(s) not within the Midwifery Board's jurisdiction to other agencies and/or refer complainants to appropriate agencies;
- (7) present each jurisdictional complaint to the Complaint Review Committee; and

(8) notify the midwife by certified mail of the category initially assigned to the complaint and the date and time of the Complaint Review Committee meeting at which the complaint will be considered, at least 30 days in advance. The midwife shall be afforded an opportunity to present relevant evidence and to show compliance with all requirements of law for the retention of licensure.

(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 Midwifery Board's website.

Source Note: The provisions of this §831.166 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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) The chair or vice-chair shall:

(A) state the legal authority for and the purpose of the conference; and

(B) outline the procedure to be followed.

(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) The Complaint Review Committee shall review all information obtained during the investigation and any statements from the complainant and/or the midwife. The Complaint Review Committee may question any person present regarding relevant information.

(B) The midwife shall be afforded an opportunity to present relevant evidence and to show compliance with all requirements of law for the retention of licensure.

(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; or

(ii) entry of an agreed order.

(D) Matters not resolved by settlement conference and/or agreed order shall be referred for a hearing.

Source Note: The provisions of this §831.167 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.168 Formal Hearings

(a) All administrative hearings under this subchapter shall be conducted 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) An administrative law judge (ALJ) appointed by the SOAH shall preside over and conduct the hearing. A formal hearing shall be held in Travis County, Texas, unless otherwise determined by the ALJ or upon agreement of the parties.

(c) After the hearing, the ALJ shall prepare a proposal for decision and provide copies of same to all parties to the hearing.

(d) The proposal for decision prepared by the ALJ will be referred to the Midwifery Board for final decision.

Source Note: The provisions of this §831.168 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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.

Source Note: The provisions of this §831.169 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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 Midwifery Board has approved the agreed order.

(b) An agreed disposition is considered a disciplinary order for purposes of reporting under this chapter and of administrative hearings and proceedings by state and federal regulatory agencies regarding the practice of licensed midwives. An agreed order is a public record. In civil or criminal litigation, an agreed disposition is a settlement agreement under Texas Rules of Civil Evidence, Rule 408, and Texas Rules of Criminal Evidence, Rule 408.

(c) The Midwifery Board may close the complaint due to insufficient evidence or for no violation.

Source Note: The provisions of this §831.170 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§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) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the licensed midwife for a service regulated by this chapter.

(c) The Midwifery Board may not require payment of other damages or estimate harm in a refund order.

Source Note: The provisions of this §831.171 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.172 Cease and Desist Order

(a) If it appears to the Midwifery Board that a licensee or a person who is not licensed under this chapter is violating the Act, this section, or another state statute or rule relating to the practice of midwifery, the Midwifery Board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(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.

Source Note: The provisions of this §831.172 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.173 Emergency Suspension

(a) The Midwifery Board or a three-member committee of Midwifery Board members designated by the Midwifery Board shall temporarily suspend a midwife's license if the Midwifery Board or committee determines from the evidence or information presented to it that continued practice by the licensed midwife would constitute a continuing and imminent threat to the public welfare.

(b) Any three members of the Complaint Review Committee selected by the Midwifery Board chair, or in the chair's absence, the vice-chair, may serve as the three-member committee unless a different three member committee is designated by the Midwifery Board.

(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) a hearing is held as soon as practicable under this chapter and Government Code, Chapter 2001.

(d) The SOAH 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.

Source Note: The provisions of this §831.173 adopted to be effective June 6, 2006, 31 TexReg 4647; amended to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689

§831.174. Default Order

(a) For purposes of this section, default means the failure of the respondent to appear in person or by legal representative on the day and at the time set for hearing in a contested case or the failure to appear by telephone in accordance with the notice of hearing.

(b) Remedies available upon default. The Administrative Law Judge (ALJ) shall proceed in the party's absence and such failure to appear shall entitle the department to seek informal disposition as provided by the Texas Government Code, Chapter 2001. The ALJ shall grant any motion by the department to remove the case from the contested hearing docket and allow for informal disposition by the board.

(c) The board may enter a default judgment by issuing an order against the defaulting party in which the factual allegations in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof, upon the offer of proof that proper notice was provided to the defaulting party opponent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Texas Government Code, Chapter 2001, and the State Office of Administrative Hearings Rules of Procedure.

(d) Motion to set aside and reopen. A timely motion by the respondent to set aside the default order and reopen the record may be granted if the respondent establishes that the failure to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to mistake, accident, or circumstances beyond the respondent's control.

(1) A motion to set aside the default order and reopen the record shall be filed with the board prior to the time that the order of the board becomes final pursuant to the provisions of the Texas Government Code.

(2) A motion to set aside the default order and reopen the record is not a motion for rehearing and is not to be considered a substitute for a motion for rehearing. The filing of a motion to set aside the default order and reopen has no effect on either the statutory time periods for the filing of a motion for rehearing or on the time period for ruling on a motion for rehearing, as provided in the Texas Government Code.

(e) This section 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 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.

Source Note: The provisions of this §831.174 adopted to be effective September 2, 2007, 32 TexReg 5371; amended to be effective March 11, 2013, 38 TexReg 1689