

The following **working draft** of the Texas Midwifery Board's Ad Hoc Rule Review Committee is current as of January 9, 2012. The Committee anticipates presenting these recommendations on rule review to the Board at the February 20, 2012 meeting in Austin, Texas.

Format of the draft:

- This working draft of the proposed preamble and rule review is subject to revision and final approval by the full Board before proposed rules will be published in the Texas Register for formal public comment.

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Title 22. Examining Boards
Part 38. Texas Midwifery Board
Chapter 831. Midwifery
Subchapter A. The Board.
Amendments §§831.1-831.4, 831.7
Subchapter B. Licensure.
Amendments §§831.11-831.17, 831.20-831.24
Subchapter C. Education and Examination.
Amendments §§831.31-831.37, 831.40
Subchapter D. Practice of Midwifery.
Amendments §§831.51 – 831.52, 831.57 - 831.58, 831.60, 831.65, 831.70, 831.75,
831.101, 831.111, 831.121, 831.131, 831.141
Subchapter E. Complaint Review.
Amendments §§831.161-831.174
Repeal §831.54
New §831.25

Proposed Preamble

The Texas Midwifery Board (board), with the approval of the Executive Commissioner of the Health and Human Services Commission, proposes amendments to §§831.1 - 831.4, 831.7, 831.11 - 831.17, 831.20 - 831.24, 831.31 - 831.37, 831.40, 831.51, 831.52, 831.57, 831.58, 831.60, 831.65, 831.70, 831.75, 831.101, 831.111, 831.121, 831.131, 831.141, and 831.161 - 831.174, repeal of §831.54, and new §831.25, concerning the licensing and regulation of midwives.

BACKGROUND AND PURPOSE

The amendments, repeal, and new rule constitute the agency review of rules required by Government Code, §2001.039. The amendments clarify and update the rules, remove obsolete language, and ensure that the rules are consistent. The repeal eliminates redundant language and establishes a uniform standard for midwifery practice in accordance with existing sections. The new rule implements Senate Bill 1733 (2011, Regular Session) related to the licensing of spouses of members of the military.

SECTION-BY-SECTION SUMMARY

The repeal of §831.54 eliminates unnecessary language which is redundant to the requirements of 831.60-831.75. The board finds it unnecessary to further require a midwife to create individualized policies and protocols under 831.54 because it is more protective of public health to have one uniform set of regulations in 831.60 Prenatal Care, 831.65 Labor and Delivery, 831.70 Postpartum Care, and 831.75 Newborn Care.

New §831.25 implements Senate Bill 1733 (2011, Regular Session) related to the licensing of spouses of members of the military.

Amendments to §831.1 reflect the new section name.

Amendments to §831.2 include wording changes consistent with existing language at 831.60 and also reflect the name change of the Texas Medical Board.

Amendments to §831.3 remove unnecessary wording related to the citation for the Act, and adds the word “unexcused” to clarify that excused absences are not counted as grounds for membership termination by the board.

Amendments to §831.4 reflect existing practice in that board member training already includes training on board policies.

Amendments to §831.7 reflect the current mailing address of the board.

Amendments to §831.11 remove obsolete language related to the transition from one year to two year license terms.

Amendments to §831.12 remove obsolete language related to the transition from one type of late fee to another, and adds a new \$20 fee for the issuance of a duplicate license.

Amendments to §831.13 clarify the section title.

Amendments to §831.14 clarify the section title and remove duplicate wording.

Amendments to §831.15 reflect the change to the section title of §834.14.

Amendments to §831.16 reflect the change to the section title of §834.14.

Amendments to §831.17 clarify the section title.

Amendments to §831.20 remove a reference to “protocols” consistent with the repeal of §831.54.

Amendments to §831.21 clarify that the board may refuse to issue a renewal license to a midwife based on a criminal conviction.

Amendments to §831.22 clarify the section title.

Amendments to §831.23 reflect current licensing practices by clarifying the section title and making corresponding changes to clarify that a denied or revoked license may not be not “reissued”; instead, an applicant may be issued a new license. New language requiring that an applicant meet the current requirements for licensure is added.

Amendments to §831.24 includes a non-substantive change which adds “a” to the section title.

Amendments to §831.31 clarify the language by changing “will” to “shall.”

Amendments to §831.32 require that a midwifery student enrolled in an approved course must complete specific increased clinical requirements in accordance with a recent change to national certification standards.

Amendments to §831.33 correct obsolete language to reflect Sunset legislation in the change from "documentation" to "licensure" because midwives receive a license and not a "letter of documentation.”

Amendments to §831.34 clarify that education course approval may be revoked for failing to meet one or more of the standards set forth in rule.

Amendments to §831.35 add an increased requirement that a new exam application must include a “certified audit” rather than “a financial statement or balance sheet.”

Amendments to §831.36 add a new method for complaint notification in order to permit a board investigator or inspector to hand deliver the notice.

Amendments to §831.37 add the word “rules” reflect the current content of the board’s jurisprudence exam.

Amendments to §831.40 clarify that continuing education may be completed to satisfy either initial or renewal licensure requirements.

Amendments to §831.51 add the phrase “using reasonable skill and knowledge” to set a clear and consistent standard for regulation, update a reference, remove a reference to “protocols” consistent with the repeal of §831.54, and insert language formerly included in §831.54 (proposed for repeal) on the midwife’s responsibility to assess the client on an ongoing basis to ensure that she is still an appropriate candidate for midwifery care.

Amendments to §831.52 remove a reference to “protocols” consistent with the repeal of §831.54.

Amendments to §831.57 include a non-substantive change from “a” to “the.”

Amendments to §831.58 remove a reference to “protocols” consistent with the repeal of §831.54.

Amendments to §831.60 add the phrase “using reasonable skill and knowledge” to set a clear and consistent standard for regulation.

Amendments to §831.65 clarify that the midwife assists in normal childbirth, add the phrase “using reasonable skill and knowledge” to set a clear and consistent standard for regulation, and remove a reference to “protocols” consistent with the repeal of §831.54.

Amendments to §831.70 add the phrase “using reasonable skill and knowledge” to set a clear and consistent standard for regulation.

Amendments to §831.75 add the phrase “using reasonable skill and knowledge” to set a clear and consistent standard for regulation.

Amendments to §831.101 remove language on the flow rate of oxygen as a specific flow rate is not consistent with current practice guidelines.

Amendments to §831.111 add and correct language to be consistent with Health and Safety Code 81.091.

Amendments to §831.121 clarify language and add a new requirement that midwives document any client’s refusal to permit the tests on a specific board form.

Amendments to §831.131 include a non-substantive change from “each” to “the.”

Amendments to §831.141 include a non-substantive deletion of “the.”

Amendments to §831.161 delete duplicate wording.

Amendments to §831.162 add an exemption to the five year limit on considering a complaint in cases of birth certificate misconduct or continuing threats to public health, welfare or safety.

Amendments to §831.163 add non-substantive wording to include the word “any.”

Amendments to §831.164 include a clarification that a category is only assigned for a jurisdictional complaint.

Amendments to §831.165 add new wording to establish that abandoning a client immediately after delivery constitutes failure to practice midwifery in a manner consistent with public health and safety.

Amendments to §831.166 remove the requirement that respondents must be notified of a complaint within 10 days, and add a new electronic option for notification of the status of the complaint.

Amendments to §831.167 remove the phrase “due to insufficient evidence” to permit the board to close a complaint for other reasons.

Amendments to §831.168 add the word “formal” to the section title for clarity.

Amendments to §831.169 add non-substantive wording to add the word “that.”

Amendments to §831.170 add new language to clarify that a proposed agreed order is not effective until approved by the board.

Amendments to §831.171 add non-substantive wording to add the word “any”.

Amendments to §831.172 clarify that each day a violation continues is a separate violation.

Amendments to §831.173 add non-substantive wording to reflect the abbreviation of “State Office of Administrative Hearings” as “SOAH”.

FISCAL NOTE

Cindy Bourland, Manager, Professional Licensing and Certification Unit, has determined that for each year of the first five years the sections are in effect, there will be fiscal implications as a result of administering the sections as proposed. The effect on state government will be an estimated increase in revenue to the state of approximately \$100 per year as a result of proposed new fee for duplicate licenses. It is estimated that costs to the state to administer the new provisions will be equal to the estimated fee increases. Ms. Bourland has also determined that there will no fiscal implications to local government as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bourland has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that these entities will not be required to alter their business practices to comply with the sections. The anticipated economic cost to persons is the new fee for a duplicate license set out in the body of the rules. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Bourland has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the licensing and regulation of midwives.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the

environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Yvonne Feinleib, Midwifery Program Director, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78756, by fax to 512/834-6677 or by email to midwifery@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments and new rule are authorized by the Texas Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Texas Occupations Code, Chapter 203.

The proposed amendments, repeal, and new rule affect the Occupations Code, Chapter 203. Review of the sections implements Government Code, §2001.039.

Section for repeal.
§831.54

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§831.1. Introduction.

(a) (No change.)

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

§831.2. Definitions.

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

(1) – (15) (No change.)

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

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

(18) – (20) (No change.)

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

§831.3. Midwifery Board.

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

(b) – (d) (No change.)

§831.4. Board Member Training.

(a) (No change.)

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

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

(2) – (4) (No change.)

(c) (No change.)

§831.7. Petition for the Adoption of a Rule.

(a) (No change.)

(b) Submission of the petition.

(1) – (3) (No change.)

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

(c) – (d) (No change.)

§831.11. License Required.

(a) (No change.)

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

(c) (No change.)

§831.12. Fees.

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

(1) – (2) (No change.)

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

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

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

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

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

(5) – (12) (No change.)

§831.13. Initial Application for Licensure.

(a) – (b) (No change.)

§831.14. License Renewal.

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

(1) – (6) (No change.)

§831.15. Late Renewal.

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

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

(2) (No change.)

(b) (No change.)

§831.16. Renewal for Retired Midwives Performing Charity Work.

(a) – (b) (No change.)

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

(d) – (f) (No change.)

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

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

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

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

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

(A) – (K) (No change.)

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

(M) (No change.)

(2) (No change.)

§831.21. Application or Renewal with Criminal Conviction.

Licensure of persons with criminal convictions.

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

(2) – (4) (No change.)

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

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

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

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

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

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

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

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

§831.24. Request for a Criminal History Evaluation Letter.

(a) – (e) (No change.)

Legend: (Proposed New Rule(s))

Regular Print = Proposed new language

§831.25 Licensing of Spouses of Members of the Military

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

(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license issued by another state that has licensing requirements shall complete and submit an application form and fee to the department. In accordance with Occupations Code, Section 55.004(c), the department may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

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

Legend: (Proposed Amendment(s))

Single Underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

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(No change.) = No changes are being considered for the designated subdivision

§831.31. Education Committee.

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

(1) – (3) (No change.)

(b) – (c) (No change.)

§831.32. Basic Midwifery Education.

(a) (No change.)

(b) Mandatory basic midwifery education shall:

(1) – (5) (No change.)

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

(A) (No change.)

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

(C) (No change.)

(7) (No change.)

(c) (No change.)

§831.33. Education Course Approval.

(a) Course approval.

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

(A) – (D) (No change.)

(E) written policies to include:

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

(iv) requirements for state licensure [documentation];

(v) – (vii) (No change.)

(2) – (4) (No change.)

(b) – (d) (No change.)

§831.34. Education Course Denial or Revocation of Approval.

(a) (No change.)

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

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

(2) – (5) (No change.)

(c) – (f) (No change.)

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

Comprehensive exams.

(1) Comprehensive exam approval.

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

(i) – (v) (No change.)

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

(vii) (No change.)

(B) – (F) (No change.)

(2) – (6) (No change.)

§831.36. Complaints Concerning Education Courses and Comprehensive Exams.

(a) – (b) (No change.)

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

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

(2) – (7) (No change.)

(d) – (i) (No change.)

§831.37. Jurisprudence Examination.

(a) (No change.)

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

(c) –(e) (No change.)

§831.40. Continuing Education.

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

(1) – (4) (No change.)

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

(A) – (B)

§831.51. Standards for the Practice of Midwifery in Texas

(a) – (d) (No change.)

(e) Midwifery care supports individual rights and self-determination within the boundaries of safety. Using reasonable skill and knowledge, the [The] midwife shall:

(1) (No change.)

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

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

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

(f) – (h) (No change.)

§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) – (2) (No change.)

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

(4) – (5) (No change.)

§831.54. Policies and Protocols

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

~~————(b) The midwife shall:~~

~~—~~

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

~~—~~

_____ (A) antepartum;

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

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

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

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

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

_____ (B) intrapartum;

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

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

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

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

_____ (C) postpartum and newborn;

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

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

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

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

- ~~_____ (2) develop and implement a plan of care based on the policies and protocols;~~
- ~~—~~
- ~~_____ (3) evaluate and modify the plan of care as necessary;~~
- ~~—~~
- ~~_____ (4) provide health education and counseling based on the policies and protocols;~~
- ~~—~~
- ~~_____ (5) assess the client on an ongoing basis for any factors which might preclude a client from admission into or continuing in midwifery care based on the policies and protocols;~~
- ~~—~~
- ~~_____ (6) review and document review of all policies and protocols at least annually; and~~
- ~~—~~
- ~~_____ (7) modify policies and protocols as needed, and document any changes.~~

§831.57. Termination of the Midwife-Client Relationship

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

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

(A) – (C) (No change.)

(2) (No change.)

§831.58. Transfer of Care in An Emergency Situation

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

(1) – (2) (No change.)

§831.60. Prenatal Care

(a) Using reasonable skill and knowledge, the [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) – (16) (No change.)

(17) any other condition or symptom which could adversely affect the mother or fetus, as assessed by a midwife exercising **[ordinary and]** reasonable skill and knowledge.

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

(1) – (14) (No change.)

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

(d) (No change.)

§831.65. Labor and Delivery

(a) Using reasonable skill and knowledge, the **[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) (No change.)

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

(d) (No change.)

(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) – (12) (No change.)

(13) laceration(s) requiring repair [**beyond the parameters set forth and documented in the protocols of the midwife**];

(14) – (15) (No change.)

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

§831.70. Postpartum Care

(a) Using reasonable skill and knowledge, the [**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 [**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) – (4) (No change.)

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

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

(1) – (4) (No change.)

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

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

(a) (No change.)

(b) Using reasonable skill and knowledge, the **[The]** midwife shall:

(1) – (3) (No change.)

(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) – (4) (No change.)

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

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

(1) – (15) (No change.)

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

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

(1) – (3) (No change.)

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

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

(1) – (12) (No change.)

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

§831.101. Administration of Oxygen

(a) – (b) (No change.)

(c) Provisions. This section establishes that:

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

(A) – (D) (No change.)

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

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

(B) (No change.)

(3) (No change.)

(d) (No change.)

§831.111. Eye Prophylaxis

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

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

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

§831.121. Newborn Screening

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

(1) – (2) (No change.)

(b) – (c) (No change.)

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

§831.131. Informed Choice and Disclosure Statement

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

(1) – (3) (No change.)

§831.141. Provision of Support Services

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

(1) – (3) (No change.)

§831.161. Complaint Review Committee.

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

(1) – (3) (No change.)

§831.162. Reporting Violations and/or Complaints.

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

(1) (No change.)

(2) The complaint review process begins when:

(A) – (E) (No change.)

(F) The board and the Complaint Review Committee may waive the time limitation in (2) (D) 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) (No change.)

§831.163. Records of Complaints.

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

(1) – (6) (No change.)

(7) any disciplinary action taken; and

(8) (No change.)

§831.164. Complaint Categories.

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

(b) (No change.)

§831.165. Disciplinary Action and Guidelines.

(a) – (b) (No change.)

(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) (No change.)

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

(A) (No change.)

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

(C) (No change.)

(3) – (8) (No change.)

§831.166. Complaint Investigation.

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

(1) notify the midwife of the complaint by certified mail [**within ten working days of reading the complaint**];

(2) – (8) (no change.)

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

§831.167. Informal Settlement Conferences.

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

(1) (No change.)

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

(A) – (B) (No change.)

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

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

(ii) (No change.)

(D) (No change.)

§831.168. Formal Hearings.

(a) – (d) (No change.)

§831.169. Disciplinary Action.

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

(1) – (12) (No change.)

(b) – (e) (No change.)

§831.170. Complaint Disposition and Appeals.

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

(b) – (c) (No change.)

§831.171. Refunds.

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

(b) – (c) (No change.)

§831.172. Cease and Desist Order.

(a) (No change.)

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

§831.173. Emergency Suspension.

(a) – (b) (No change.)

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

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

(2) (No change.)

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

§831.174. Default Order.

(a) – (d) (No change.)

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