

## Professional Conduct Committee

21 July 2008

The Registrar  
Midwifery Council of New Zealand  
PO Box 10-140  
Wellington

Ms B (Midwife)

Midwifery Council (Referrer)

This is a Professional Conduct Committee (PCC) report into its investigation into the Midwifery Council's referral of Ms B. The PCC was appointed under section 71 of the Health Practitioners Competence Assurance Act 2003. Its members are Ms W (Chairperson), Ms S and Ms L.

This report, with its accompanying recommendation, is made under Section 80 of the HPCA Act.

### 1. Background

At its meeting on 8/9 May 2008, the Midwifery Council referred Registered Midwife Ms B to the Professional Conduct committee. The Council determined that the PCC would comprise Ms W (Chairperson), Ms S and Ms L.

The Council's reasons for referral were:

- Ms B had failed to engage in the Recertification programme over the 2005 – 08 cycle and meet its requirements
- Ms B had falsely signed the declaration on the Practising Certificate application form, declaring that she was engaged in the recertification programme and meeting its requirements.

### 2. Process

The Committee believes that it has given Ms B reasonable opportunity to make written submissions and be heard personally on the matter under investigation. The following section sets out the process on which the PCC bases this belief.

#### 1. Teleconference

On Tuesday 15 July, the PCC met by teleconference at 8.00pm to review the Guidelines, discuss the matter before the PCC and decide what further actions, if any, were necessary for the PCC to discharge its responsibilities under the HPCA Act.

#### 2. Appointment of Legal Advisor

The PCC agreed that it was not necessary to appoint a legal advisor in this matter.

#### 3. Appointment of Investigator

The PCC decided that it had sufficient documentation before it to fully consider the matter.

#### **4. Written Information considered by the PCC**

- Letter of referral dated 21 May 2008 from Midwifery Council
- Letter dated 5 June 2008, responding to the PCC letter of 21 May, enclosing documentation from her recertification portfolio

#### **3. Purpose of the Health Practitioners Competence Assurance Act 2003**

The Health Practitioners Competence Assurance Act 2003 established a regulatory framework with the primary purpose of protecting the health and safety of the public by ensuring health practitioners are competent and fit to practise their professions.

In the Outline of the HPCA Act, it states in S2 (d) that the Act contains provision that:

(d) stop the authority, in the case of applications for practising certificates, from approving those applications unless the authority is satisfied that the health practitioners concerned are competent to practise in accordance with their scopes of practice.

In the Interpretation within the Act, S5 (1) states that:

authority means a body corporate appointed, by or under this Act, as the body that is, in accordance with this Act, responsible for the registration and oversight of practitioners of a particular health profession

In the case of midwives, it is the Midwifery Council of New Zealand that is the responsible regulatory authority.

#### **4. Statutory responsibility of Midwifery Council to be satisfied midwives are competent to practise**

The Health Practitioners Competence Assurance Act (HPCAA) 2003 requires the Midwifery Council to satisfy itself that any midwife applying for a practising certificate is competent to practise within the Midwifery Scope of Practice. The Council is responsible for setting the competence standards and establishing a process by which to determine the ongoing competence of midwives.

Under Section 41 of the HPCAA the Midwifery Council resolved that all registered midwives must participate in its Recertification Programme in order to meet the competence requirements necessary for a practising certificate to be issued. Since April 2005 all practising midwives have been required to demonstrate their continuing competence to practise at the minimum level required for entry to the profession.

Public safety is assured through a midwifery workforce that demonstrates both professionalism and competence. Participation in the Recertification Programme, and in particular, the Midwifery Standards Review component, meets the requirement for LMC midwives working under the Section 88 Notice to participate in a professional review process that is recognised by the Midwifery Council.

#### **5. Midwifery Council's engagement with Ms B to ascertain her engagement in the Recertification Programme**

In September 2007, the Midwifery Council reviewed its records to determine which midwives for whom it had no evidence that they had engaged in Midwifery Standards Review, part of the Recertification Programme, in the preceding three years. As there was no evidence of

Ms B having undertaken Midwifery Standards Review in the preceding three years despite its being an annual requirement as a midwife who claims under the Section 88 Notice, she was written to by the Council on 28 September.

In the 28 September letter, Ms B was advised there was no record of her having undertaken Standards Review. She was asked to forward evidence if she had in fact undertaken Standards Review or to notify the Council when her Review was booked. The Council did not receive any reply from Ms B.

On 24 January, Ms B received a further letter from the Council, reiterating that it had written to her on 28 September 2007 but had received no reply. She was again asked to forward evidence if in fact she had undertaken Review. She was also advised that if she had not undertaken Standards Review, she would not be issued with an Annual Practising Certificate but instead, would receive an Interim Practising Certificate. She was also informed that if the Council had heard nothing from her by 4 February, she would be asked to forward her Portfolio to the Council for audit and referral to the Professional Conduct Committee would be considered.

Her portfolio was received by the Council on 28 March and it was forwarded for audit. The auditor's report of 16 April indicated there was evidence of only minimal engagement in the Recertification Programme. The matter was considered at the Council's meeting of 8/9 May and Ms B was subsequently referred to the PCC. In the interim, she was issued with an Interim Practising Certificate which expires on 18 July 2008.

## **6. Recertification Programme April 2005 – March 2008**

The Midwifery Council consulted widely on its proposed Recertification Programme in August and September 2004. It made changes in response to feedback and finalised its Recertification Programme as policy on 11 November 2004. This policy was updated in March 2005. Midwives were notified of the requirements by newsletter and through the website. Implementation of the Recertification Programme began on 1 April 2005. The 2006/07 practising certificate round initiated the requirement for all midwives to sign a declaration that they were participating in the Recertification Programme. The Midwifery Council commenced auditing individual midwife participation in 2006.

### **1. Components of the Recertification Programme 2005 - 2008**

The components of the Recertification Programme are:

- a) A declaration of competence to practise within the Midwifery Scope of Practice (annually on application for PC)
- b) Practice across the Scope over a three-year period
- c) Maintenance of a professional portfolio containing information and evidence about practice, and education and professional activities over each three-year period
- d) Completion of compulsory education:
  - Technical Skills Workshop – one two day workshop once in the three year period
  - Neonatal resuscitation workshop – annually
  - Adult CPR workshop – annually
  - Breastfeeding workshop – one workshop in the three year period
- e) Completion of 40 points of elective education
- f) Completion of 30 points of professional activities (reduced from 60)

- g) Participation in New Zealand College of Midwives Midwifery Standards Review Process (MSR) – annually for midwives claiming under the Section 88 Notice

## 7. Ms B's participation in Recertification Programme

The documentation forwarded to the PCC from Ms B indicates that in the three years between April 2005 and March 2008, Ms B completed the following components:

- **2005** Supervision of midwifery student in short placement 14 March – 7 April (10 professional activity points per year)
- **2005** The Spirit of Birth: Nature, Nurture and the Evidence – 15 May (10 points elective education)
- **2006** Adult CPR and Neonatal Resuscitation Study Day - 14 July
- **2007** Supervision of midwifery student in short placement (10 professional activity points per year)

Recertification Programme Requirements	Ms B's Participation
Technical Skills Workshop - One	Nil
Neonatal resuscitation - three (one annually)	One
Adult CPR - three (one annually)	One
Breastfeeding - One	Nil
Elective education - 40 points	10 points
Professional activities – 30 points	20 points
Midwifery Standards Review – three (one annually)	Nil

The table shows clearly that Ms B's participation in the Recertification Programme was at best minimal and by any standard, inadequate. As it is the Recertification Programme whereby midwives demonstrate their competence to practise to the Midwifery Council, Ms B has not demonstrated her competence. Consequently, it would be difficult for the Midwifery Council to be satisfied that Ms B is competent to practise within the Midwifery Scope of Practice as it is required to do to fulfil its statutory responsibilities under the HPCA Act and as set out in section 3 above.

It is again important to state that the principal purpose of the HPCA Act is to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions. The safety of maternity services is always an area that is subject to fierce media and public scrutiny. When the Midwifery Council responds to concerns about the quality of midwifery services, it does so based on its knowledge that the Recertification Programme is in place and that midwives are participating in it.

The Council states on its website:

*Through this process nationally, the midwifery profession will collectively engage in a process of self-reflection and professional development that will improve standards of*

*midwifery care and contribute to ongoing quality improvement in the midwifery workforce. Public safety is assured through a midwifery workforce that demonstrates both professionalism and competence.*

When midwives elect not to participate in the Recertification Programme, that Midwifery Council assurance becomes based on false premises and it places the integrity of the midwifery profession at risk. It will also lead to a diminution of trust placed in midwives by the women and their families who use maternity services in New Zealand. The non-participating midwife therefore not only places her own professional career at risk, she places woman and their babies at risk and she fails in her responsibility to her midwifery colleagues and the profession.

## **8. Standards of the Midwifery profession**

These standards are:

### **8.1 The New Zealand College of Midwives' Philosophy and Code of Ethics**

These are the foundation of midwifery practice. In the section of the Code entitled "Responsibilities to Colleagues and the Profession", it states:

*Midwives develop and share midwifery knowledge through a variety of processes such as peer review and research.*

### **8.2 The New Zealand College of Midwives' Standards of Practice**

The Standards of Practice are developed from the Philosophy and Code of Ethics to form the basis of midwifery practice and provide the framework in which midwives conduct their professional activities.

**STANDARD SEVEN:** The midwife is accountable to the woman, to herself, to the midwifery profession and to the wider community for her practice.

- Recognises her own learning needs and finds opportunities to have these met
- Reflects on practice

**STANDARD EIGHT:** The midwife evaluates her practice.

- Utilises the results of the evaluation of her practice
- Participates regularly in the New Zealand College of Midwives Midwifery Standards Review process

### **8.3 The Competencies for Entry to the Register of Midwives**

The HPCA Act sets out in Section 41 the responsibility of the Regulatory Authority with respect to Recertification Programmes.

S41 (1) For the purpose of ensuring that health practitioners are competent to practise within the scopes of practice in respect of which they are registered, each authority may from time to time set or recognise recertification programmes for practitioners who are registered with the authority.

The Midwifery Council states that the Competencies for Entry to the Register of Midwives provide detail of the skills, knowledge, and attitudes expected of a midwife to work within the Midwifery Scope of Practice.

## Competency Four

***“The midwife upholds professional midwifery standards and uses professional judgment as a reflective and critical practitioner when providing midwifery care.”***

- 4.5 assesses practice in relation to current legislation, the Midwifery Scope of Practice and Competencies for Entry to the Register of Midwives, and the New Zealand College of Midwives’ “Handbook for Practice” and “Code of Ethics”
- 4.7 participates in Midwifery Standards Review using professionally recognised standards and reflects on and integrates feedback from clients and peers into midwifery practice
- 4.10 demonstrates a commitment to participate in ongoing professional development

By not engaging in meaningful way in the Recertification Programme, Ms B has not acted in a professional manner and met the standards required of her as a midwife. Further, undertaking a single adult CPR and Neonatal resuscitation workshop of the compulsory components in the three year cycle, Ms B also placed women and babies in her care at risk.

### **9. Ms B’s signing of a statutory declaration**

Ms B applied for and received her Practising Certificates for each of the years 06/07, 07/08 and 08/09. On each occasion, she signed the declaration which stated:

*“I declare that I am participating in the Midwifery Council’s Recertification Programme”.*

In her application 08/09 year, she ticked the declaration and noted that she had booked for MSR on 8 April 08. The PCC infers that this was a response to the Council’s letters of 28 September 2007 and 24 January 2008 when she was asked to advise the Council the date of booking for her Midwifery Standards Review if she had not undertaken one previously.

The PCC is of the view that when a midwife signs a declaration that she is participating in the Recertification Programme, this indicates she is complying with the components of the programme. It is clear to the PCC from the section 7 above that Ms B was not complying with components of the programme. To the contrary, her compliance was minimal and as already stated, Ms B had undertaken only a single CPR and Neonatal resuscitation workshop of the compulsory components.

In signing the declaration that she was participating when she was not, Ms B made false declarations on three consecutive occasions. This is both unethical and unprofessional and possibly illegal.

### **10. Ms B’s response**

Ms B responded to the Midwifery Council on 5 June 2008. In her letter, she acknowledged that she had failed to participate in the Recertification Programme.

*I accept I have failed to engage in the Recertification Programme and have failed to meet the requirements of the programme. I can only apologise.*

*...While I did undertake some activity (eg taking midwifery students), I do understand this was not an adequate level of participation.*

*I understand the situation I now find myself in. I have talked to several colleagues who have been forthright in their views on the need for me to complete the programme and have reiterated to me the need to actively engage with the programme.*

*Starting in March of this year I have now taken steps to correct the situation.*

*I have already prepared my portfolio and have attended a Midwifery Standards Review in April (certificate attached).*

*I have also already attended a Technical Skills Study Day this month (certificate attached).*

*I have also enrolled for the following seminars:*

*CTG Study Day 16 June 2008 (confirmation attached)*

*CPR & Neonatal Resuscitation 18 July 2008 (receipt attached)*

*Technical Skills Study Day 2 24 July 2008 (confirmation attached)*

*Advanced breastfeeding Study Day (confirmation attached)*

*Midwifery Conference September 2008 (confirmation attached)*

*As I have said above, I fully understand the need to participate in the programme and it was always my intention to do so. The fact that I did not was a combination of oversight on my part and other issues in my private life.*

*I hope the action I have already taken demonstrates the seriousness of my commitment to ongoing involvement and the maintenance of my competence.*

The PCC accepts that Ms B has reflected on her conduct and the seriousness of her non-compliance with the Recertification Programme. She also accepts that participation in the programme is necessary for her to both maintain and demonstrate her competence and is committed to ongoing involvement. This reflection of Ms B on her conduct and on the seriousness of her omissions, together with the remedial action she has undertaken and has committed to in the coming months have influenced the PCC with respect to the recommendations it is making to the Midwifery Council.

## **11. Recommendations**

The PCC recommends, in accordance with S80(2)(e) of the Health Practitioners Competence Assurance Act 2003, that the Midwifery Council should counsel Ms B with respect to the following matters:

**11.1** That in failing to comply with the components of the Recertification Programme and in signing a declaration in which she declared she was participating in the programme, Ms B misled the Midwifery Council which issued Practising Certificates in 2006, 2007 and 2008 in the belief that Ms B had demonstrated her competence. This conduct is both unprofessional and unethical, for which Ms B should be censured.

**11.2** Ms B has advised of her enrolment in several workshops. She should forward to the Council evidence of completion of these workshops immediately following each event.

**11.3** Ms B has provided evidence of Midwifery Standards Review on 8 April 2008. She should forward to the Council a copy of the Professional Development Plan that was formulated at that review.

**11.4** Ms B should forward to the Council a plan on how she will comply with the Recertification Programme for the 2008 – 2011 cycle when she applies for her next practising certificate on the expiration of her current IPC.

**11.5** Because Ms B had not undertaken a single Midwifery Standards Review in the 2005 – 2008 Recertification cycle, she should have another MSR in or around April 2009. She should forward evidence to the Council of this review, together with the Professional Development Plan, following the event.

**11.6** Ms B's portfolio should be audited in June/July 2009.

Ms W  
Chairperson  
Professional Conduct Committee

21 July 2008