



Midwifery Council of New Zealand

Summary of Policy for Conduct of Competence Reviews

Refer Health Practitioners Competence Assurance Act 2003 Sections 34-38, 42 & 44

Introduction

The purpose of the Health Practitioners Competence Assurance Act 2003 (HPCA Act) is to protect the health and safety of members of the public by providing mechanisms to ensure that health practitioners are competent and fit to practise their professions.

Triggers for Competence Reviews

The triggers which compel the Midwifery Council to consider whether a midwife should undergo competence review include:

- Notification of a concern from another health practitioner;
- Referral from the Health and Disability Commissioner or Director of Proceedings;
- Dismissal or resignation of an employee for reasons relating to competence;
- Recommendation from the Council's Professional Conduct Committee.

Meaning of “required standard of competence”

The HPCA Act defines “required standard of competence” as meaning the standard of competence reasonably to be expected of a midwife practising within the Midwifery Scope of Practice.

The Competencies for Entry to the Register of Midwives are the entry-level criteria to measure competence. In addition, the Code of Ethics and Guidelines in the “Midwives Handbook for Practice” published by The New Zealand College of Midwives 2005 edition (“NZCOM”) and the “Consensus Statements” published by NZCOM in January 2003 represent best practice.

Midwives are also required to be aware of and comply with the requirements of:

- Maternity Services Notice pursuant to Section 88 of the New Zealand Public Health and Disability Act 2000
- Medicines Act 1981
- Medicines Regulations 1984
- Misuse of Drugs Act 1975
- Misuse of Drugs Regulations 1977
- Privacy Act 1993
- Health Information Privacy Code 1994
- Code of Health and Disability Services Consumers' Rights 1996
- all other relevant legislation

Where there is a risk of harm or serious harm to the public

The HPCA Act requires the Council to consider suspending or placing conditions on a midwife's practice if it believes that a midwife poses a risk of serious harm to the public. Only in exceptional circumstances will such orders be made before a Competence Review has taken place.

The Competence Review Panel

The Council has a Pool of senior midwives from which each Panel is appointed according to specific criteria. Panel members are required to sign a confidentiality agreement in which they undertake not to reveal or release any personal or health information obtained about the midwife under review or her clients except as required to do so during the course of the review.

A Panel usually consists of two midwives. At least one of the Panel will be a midwife with current or very recent experience of work in a similar setting to that of the midwife to be reviewed. One or more members may be members of the Midwifery Council.

At the same time as establishing the Panel the Council gives written notice to the midwife informing her of:

- the substance of the concerns and reasons why the Council has decided to review her practice; and
- any information relating to her competence that the Council already has;
- the terms of reference of the Review (s37);
- the proposed composition of the of the Panel;
- her liability for her own costs;
- her rights and responsibilities.

Terms of Reference

The Council provides the Panel with Terms of Reference for each Review together with a copy of the relevant report from the Health and Disability Commissioner if one exists and any other relevant correspondence or information.

The Terms of Reference detail:

- why the review is to be carried out;
- the particular areas on which the Review is to focus;
- the activities that should be carried out (as a minimum) to assess competence;
- reporting requirements.

The Review Panel does not investigate specific complaints and a Review is not a dispute resolution process. Rather, complaints or notifications are regarded as examples of where it appears a midwife may not be practising competently and a Review examines relevant aspects of the midwife's entire practice.

Reviews may include such activities as:

- reviewing files and records
- oral questioning e.g. of findings, diagnostic tests, clinical recommendations
- reviewing the midwife's portfolio and engagement in the Recertification programme
- review of prescribing practice or patterns
- review of practice systems
- observation of consultations and interactions with clients (subject to client consent),
- interviews and discussions with the midwife
- interviews with the midwife's colleagues and other related professional people (eg pharmacist, medical practitioner, employer, health professional complainant);
- written or oral tests,
- reviewing information provided to consumers

Right to be heard

Generally a review will begin with a discussion between the Panel and the midwife. It will end with the Panel disclosing to the midwife what they have found during its investigations and giving the midwife an opportunity to respond. The midwife under review is entitled to:

- know what matters have been raised which are of concern to the Panel; and
- have a reasonable opportunity to respond; and
- have a support person present.

Confidentiality

Members of a Review Panel do not disclose any information about an identifiable individual obtained from examination of a midwife's clinical records, other than for the purpose of:

- reporting to the Council about the midwife's competence; or
- any criminal investigation or proceedings taken against the midwife; or
- making the information available to the person to whom the information relates.

Unless the Council is of the view that there is a risk of harm or serious harm to the public, the Council does not release details about a review without the consent of the midwife. The midwife is expected to inform her employer, professional partners or associates and any DHB with whom she has an Access Agreement that the review is taking place.

Reporting to the Midwifery Council

Within 21 days of completing the review the Review Panel reports in writing to the Council and identifies any areas of concern in relation to;

- the required standard of competence
- professional guidelines
- legislative requirements

In circumstances where the Review Panel believe the midwife under review poses a risk of harm to the public or in any other situation that requires urgent attention the Panel may make a verbal report to the Council by way of a teleconference. If as a result of that verbal report the Council resolves to make an Order for interim suspension, the process set out in section 39 and the submission process referred to below will proceed in tandem.

Submission process

The Review Panel's written report is submitted to the Council which inspects it from a quality assurance perspective as to whether the Terms of Reference have been covered, the process appears fair and recommendations are supported by evidence. A copy of the report and a copy of any earlier report which the Council may take into account is then forwarded to the midwife who is invited to make a written submission within ten working days.

The report, the written submission and any earlier report of relevant historical record is then together be considered by the Council.

Midwifery Council action

After considering the report of the Review Panel and the midwife's submission, if the Council decides that the information raises a question about the appropriateness of the midwife's conduct, it may refer the matter to a Professional Conduct Committee.

If the Council decides that the report contains information that raises a question about the ability of the midwife to practice because of some mental or physical condition, it may refer the matter to its Health Committee.

If the Council decides that the midwife has failed to meet the required standard of competence it must make one or more of the following orders:

- that the midwife undertakes a competence programme
- that one or more conditions be included in the midwife's scope of practice
- that the midwife undertakes an examination or assessment
- that the midwife be supervised by another midwife

When a midwife's practice is found to be so far below the reasonably accepted standard as to make the risk of harm to a mother or baby unacceptable the Council considers whether the threshold of risk of harm or risk of serious harm has been met and considers proposing to order that the midwife's practising certificate be suspended or that the midwife's scope of practice be altered. In such a case the midwife has the right to make submissions before any Order is made.

A midwife who has been suspended or had conditions on her practice imposed or varied is entitled to appeal the Council's decision to the District Court.

Publication of Orders

Section 157 of the HPCA Act allows the Council to publish the effect of any Order, a summary of any findings made and the name of the health practitioner concerned.