

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control _____ Department or Agency Alabama State Board of Midwifery
Rule No. 582-X-4
Rule Title: Complaint Review
_____ New X Amend _____ Repeal _____ Adopt by Reference _____

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? No

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer 

Date July 20, 2018

(DATE FILED)
(STAMP)

APA-2
11/96

Alabama State Board of Midwifery

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama State Board of Midwifery

RULE NO. & TITLE: 582-X-4 Complaint Review

INTENDED ACTION: New

SUBSTANCE OF PROPOSED ACTION: The Board proposes to establish rules for filing complaints, establishing a complaint review committee, disciplinary action guidelines, dispositions, appeals and emergency suspension processes.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Written comments will be received by the Board until 4:00 p.m. on Wednesday, September 5, 2018. Comments should be directed to Noel J. Leithart, Board Chair at Post Office Box 1282, Gardendale, AL 35071 or via electronic mail at fruitfulvinemidwife@gmail.com or via telephone at 205-725-5306.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
Wednesday, September 5, 2018.

CONTACT PERSON AT AGENCY: Noel J. Leithart
Board Chair
Post Office Box 1282
Gardendale, AL 35071
(205) 725-5306



Noel J. Leithart, Board Chair
Alabama State Board of Midwifery

NEW
Alabama Board of Midwifery
Administrative Code
Chapter 582-X-4
Complaint Review

582-X-4-.01	Purpose
582-X-4-.02	Construction
582-X-4-.03	Complaint Review Committee
582-X-4-.04	Reporting Violations and/or Complaints
582-X-4-.05	Records of Complaints
582-X-4-.06	Disciplinary Action Guidelines
582-X-4-.07	Complaint Investigation
582-X-4-.08	Disciplinary Action
582-X-4-.09	Complaint Disposition and Appeals
582-X-4-.10	Emergency Suspension

582-X-4-.01 Purpose. To establish a standard procedure by which the Alabama State Board of Midwifery (ASBM) will investigate formal complaints submitted in regards to licensed midwives.

Author: Alabama State Board of Midwifery

Statutory Authority: Code of Ala., 1975, 34-19-14, et seq.

History:

582-X-4-.02 Construction. These sections cover the Complaint Review Committee; Reporting violations and/or complaints; Records of complaints; Disciplinary action guidelines; Complaint investigation; Settlement conferences; Disciplinary action; Complaint disposition and appeals; and Emergency suspension.

Author: Alabama State Board of Midwifery

Statutory Authority: Code of Ala., 1975, 34-19-14, et seq.

History:

582-X-4-.03 Complaint Review Committee. With the approval of the Alabama State Board of Midwifery, the chair of the Board shall appoint a Complaint Review Committee for two-year terms to consider all complaints filed against licensed midwives and to make recommendations to the ASBM.

(a) The Complaint Review Committee shall consist of the following ASBM members:

(1) two certified professional midwives;

(2) either the RN, CNM, nurse practitioner or consumer

(b) During the investigation and consideration of a complaint, the Complaint Review Committee shall schedule an investigative committee meetings to discuss the complaint and to consider any recommendations for disposition of the complaint. At no time shall the Complaint Review Committee or ASBM disclose the identity of the midwife's client.

Author: Alabama State Board of Midwifery

Statutory Authority: Code of Ala., 1975, 34-19-15, et seq.

History:

582-X-4-.04 Reporting violations and/or complaints. Any person or agency may contact the ASBM, alleging that a Licensed Midwife has violated Act 2017-383, any provisions of this subchapter, or any other law or rule relating to the practice of midwifery in Alabama.

- (a) ASBM shall provide a complaint form with instructions available on the website.
- (b) The complaint review process begins when:
 - (1) the complaint form is complete and received by the ASBM;
 - (2) the ASBM confirms that the subject of the complaint is a midwife licensed in Alabama;
 - (3) the ASBM confirms that the complaint contains allegations relating to the practice of midwifery;
 - (4) The ASBM confirms that the complaint alleges acts which took place not more than 18 months post-care before the receipt of the complaint;
 - (5) the ASBM assigns a case number.
- (c) If the complainant has provided his or her name and contact information, the ASBM shall confirm receipt of the complaint form in writing within ten working days.

Author: Alabama State Board of Midwifery

Statutory Authority: Code of Ala., 1975, 34-19-15, et seq.

History:

582-X-4-.05 Records of complaints. The ASBM shall maintain the following information concerning each complaint filed, if applicable:

- (a) a copy of the complaint;
- (b) record of all persons contacted in relation to the complaint;
- (c) client records;
- (d) other records requested during the investigation;
- (e) a summary of findings;
- (f) basis for recommending closure of the complaint;
- (g) disciplinary action taken; and
- (h) other relevant information.

Author: Alabama State Board of Midwifery

Statutory Authority: Code of Ala., 1975, 34-19-15, et seq.

History:

582-X-4-.06 Disciplinary action guidelines.

- (a) 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 LM;
 - (6) the length of time the LM has practiced;
 - (7) the extent of the client's injuries, physical or otherwise;

- (8) any efforts at rehabilitation or remediation by the LM;
- (9) prior determinations by the ASBM that the LM has violated Act 2017-383 and/or rules; and
- (10) any other mitigating or aggravating circumstances.

Author: Alabama State Board of Midwifery

Statutory Authority: Code of Ala., 1975, 34-19-15, et seq.

History:

582-X-4-.07 Complaint investigation. The Complaint Review Committee shall:

- (a) notify the Licensed Midwife of the complaint by certified mail within ten working days of receipt of the complaint;
- (b) obtain all relevant midwifery records and medical records necessary to conduct an investigation of a complaint with the necessity of consent of the LM's client;
- (c) interview the complainant, the respondent, and any witnesses;
- (d) review and evaluate all information received; and
- (e) Determination will be made as to whether probable cause to proceed. If probable cause to proceed, the LM will be notified within 30 days, by certified mail of the date and time of the hearing at which the complaint will be considered. All hearings shall be held in accordance with the Administrative Procedures Act.

Author: Alabama State Board of Midwifery

Statutory Authority: Code of Ala., 1975, 34-19-15, et seq.

History:

582-X-4-.08 Disciplinary action.

- (a) Penalties and sanctions. If the ASBM finds a person has violated Act 2017-383 and/or rules adopted under the Act 2017-383 or any other law or rule relating to the practice of midwifery in Alabama, 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 LM's practice for a specified time;
 - (4) suspension of the LM's license for a specified time;
 - (5) revocation of the LM's license;
 - (6) required participation by the LM in counseling and treatment for psychological impairment, or intemperate use of alcohol or drugs;
 - (7) required participation by the LM in one or more education or continuing education programs;
 - (8) required practice by the LM under the direction of a preceptor for a specified period;
 - (9) probation of any penalty imposed;
 - (10) acceptance of the voluntary surrender of a LM's license, but without reissuance of license unless the ASBM 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;

- (12) The board may refer a complaint to the proper authorities;
- (13) assessment of an administrative penalty against the Licensed Midwife not to exceed \$1,000 for each violation.
- (b) Failure to cooperate. Failure to provide all records requested by the ASBM 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 an ASBM order shall constitute grounds for additional disciplinary action.
- (d) Failure to comply with any other requirements that are necessary to protect the public shall constitute grounds for additional disciplinary action.

Author: Alabama State Board of Midwifery

Statutory Authority: Code of Ala., 1975, 34-19-15, et seq.

History:

582-X-4-.09 Complaint disposition and appeals.

- (a) The ASBM 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 regarding the practice of licensed midwives. An agreed order is a public record.
- (c) The ASBM may close the complaint due to insufficient evidence or for no violation.

Author: Alabama State Board of Midwifery

Statutory Authority: Code of Ala., 1975, 34-19-15, et seq.

History:

582-X-4-.10 Emergency suspension. If the ASBM finds that danger to the public health, safety, or welfare requires emergency suspension of a license and states in writing its reasons for that finding, it may proceed without hearing or upon any abbreviated hearing that it finds practicable to suspend the license. The suspension shall become effective immediately, unless otherwise stated therein. The suspension may be effective for a period of not longer than 120 days and shall not be renewable. The ASBM shall not suspend the same license for the same or a substantially similar emergency within one calendar year from its first suspension unless the ASBM clearly established that it could not reasonably be foreseen during the initial 120-day period that such emergency would continue or would likely re-occur during the next nine months. When such summary suspension is ordered, a formal suspension or revocation shall be promptly instituted and acted upon.

Author: Alabama State Board of Midwifery

Statutory Authority: Code of Ala., 1975, 34-19-14, et seq.

History: