

APA-1
11/96

**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

X New _____ 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? Yes

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
Reference Service.

Signature of certifying officer: 

Date: March 21, 2018

(DATE FILED)
(STAMP)

Alabama State Board of Midwifery

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama State Board of Midwifery

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

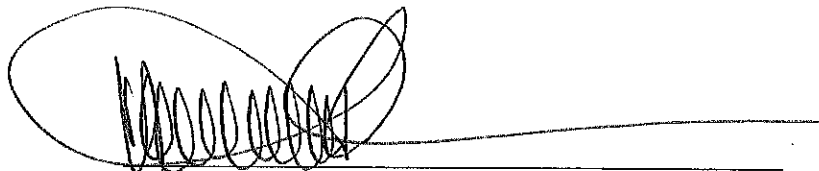
INTENDED ACTION: New

SUBSTANCE OF PROPOSED ACTION: The Board proposes to establish a standard procedure by which the Alabama State Board of Midwifery (ASBM) will investigate formal complaints submitted in regards to licensed midwives.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Written comments will be received by the Board until 4:00 p.m. on Thursday, May 3, 2018. Comments should be directed to Keith E. Warren, Acting Executive Director at 2777 Zelda Road, Montgomery, AL 36106 or via electronic mail at keith@alstateboard.com or via telephone at 334-269-9990.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
Thursday, May 3, 2018

CONTACT PERSON AT AGENCY: Keith E. Warren
Acting Executive Director
2777 Zelda Road
Montgomery, AL 36106
(334) 269-9990



Keith E. Warren, *Acting Executive Director*
Alabama State Board of Midwifery

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

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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; Emergency suspension; and Default order.

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, one of whom shall serve as the chair and the other shall serve as vice-chair;
 - (2) either the registered nurse, nurse practitioner or certified professional midwife
 - (3) either another certified professional midwife or the consumer
- (b) The ASBM chair may appoint ad hoc working groups consisting of committee members, licensed midwives, and other persons as necessary.
- (c) 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 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 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 Alabama.

- (a) ASBM staff shall provide a complaint form to the complainant by mail within ten working days of being contacted by the complaint.
- (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 is jurisdictional;

- (4) the ASBM confirms that the complaint alleges acts which took place not more than 12 months before the receipt of the complaint; and
- (5) the ASBM assigns a case number.
- (c) If the complainant has provided his or her name and address, the ASBM shall confirm receipt of the complaint form in writing within ten working days.

Author: Alabama State Board of Midwifery

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 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 ASBM that the midwife has violated the Act 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 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 without the necessity of consent of the midwife's client;
- (c) interview the complainant, the respondent, and any witnesses;
- (d) obtain any available peer review reports;
- (e) review and evaluate all information received; and
- (f) notify the midwife by certified mail of 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 in writing or in person.

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 the Act and/or rules adopted under the Act 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 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, prescription or illicit 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 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; or
 - (12) assessment of an administrative penalty against not to exceed \$1,000 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 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 a ASBM order 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.

(a) The ASBM or a three-member committee of ASBM members designated by the ASBM shall temporarily suspend a midwife's license if the ASBM 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 ASBM 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 ASBM.

(c) The Complaint Review Committee 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.

Author: Alabama State Board of Midwifery

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

History:

582-X-4-.11 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 Complaint Review Committee shall proceed in the party's absence, and such

failure to appear shall entitle the Committee to seek informal disposition.

- (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 charges 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.
- (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.
- (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 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.

Author: Alabama State Board of Midwifery

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

History:

582-X-4-.12 ASBM Consumer Complaints

COMPLAINT INFORMATION AND PROCESS

The Alabama State Board of Midwifery (ASBM) is sending the enclosed in response to your request regarding submission of a complaint against a licensed midwife. The ASBM is a State Board created by the Alabama legislature to regulate and enforce the practice of midwifery in the State of Alabama pursuant to statute and rules. The statute allows the Board to adopt rules to enforce the provisions. Upon receipt of a complaint against

any individual licensed by the Board, the following process takes place.

Step 1: The ASBM receives a written complaint and other related documents. The complaint will not be processed unless the Complaint Form and all other related documents are fully completed and signed.

Step 2: The ASBM will acknowledge receipt of the complaint by letter and request the complainant to complete and sign any other documents necessary to investigate the complaint.

Step 3: The office of the ASBM will request, utilizing signed releases and authorizations, all necessary documents and records.

Step 4: Depending on the nature and circumstances of the complaint, the complainant or other individuals may be interviewed by the Board or its duly authorized agents or representatives.

Step 5: The complaint and all documents and information obtained are then assigned to a probable cause committee consisting of three members of the ASBM. The probable cause committee then determines whether probable cause exists to support a violation of any of the provision of the law or statute. If there is a determination of no probable cause, the complainant and the midwife are so notified. If there is a determination that probable cause exists, the administrative disciplinary process is instituted, which includes, among other things, a notice of charges and hearing before the Board.

Step 6: At the conclusion of the hearing, the Board renders a decision. If there is a determination of guilt, the Board has disciplinary options including revocation, suspension or probation of the midwifery license, fines and/or the imposition of costs.

Step 7: The ASBM strives to complete the complaint process as expeditiously as possible; however, for a variety of reasons, it

is not uncommon for the complaint process to take a considerable amount of time.

Author: Alabama State Board of Midwifery

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

History: