ALABAMA STATE 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, §§34-19-15, et seq.
History: **New Rule:** Filed September 24, 2018; effective November 9, 2018. **Amended:** Published January 31, 2021; effective March 16, 2020.

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, §§34-19-15, et seq.
History: **New Rule:** Filed September 24, 2018; effective November 9, 2018. **Amended:** Published January 31, 2021; effective March 16, 2020.

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:

1. One certified professional midwife serving on the ASBM; and

2. Either the RN, CNM, nurse practitioner or consumer; and

3. Either the executive director of the Board, administrative assistant of the Board, or the Board's attorney.

(b) During the investigation and consideration of a complaint, the Complaint Review Committee shall schedule an investigative committee meeting 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: **New Rule:** Filed September 24, 2018; effective November 9, 2018. **Amended:** Published January 31, 2021; effective March 16, 2020.

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) Individuals may request a complaint form from the ASBM.

(b) The complaint review process is as follows:

1. the complaint form is completed 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 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.

(d) Informal Settlement

1. Board counsel is authorized to enter into settlement negotiations on behalf of the Board.

2. Neither the Board nor the Licensee is obligated to participate in informal settlement negotiations or to enter into an informal settlement agreement.

3. If the Board and the Respondent do enter into an informal settlement agreement, that settlement agreement will be memorialized in a Consent Order, which must be signed by the Respondent or its agent and the Executive Secretary of the Board.

4. A consent Order must contain a recitation in the complaint of the facts giving rise to the allegations, a citation to the code or regulatory sections involved in the allegations, a statement of the terms upon which the parties have agreed to settle the case, and must state that the agreement is not effective unless and until the Board approves the agreement at its next meeting.

5. No informal settlement will be final until a majority of the Board approves it at the next meeting of the Board.

6. The Board member who served on the Investigative Committee may present the proposed settlement to the Board but may not participate in deliberations regarding whether to accept it and may not participate in the vote on whether to accept it.

7. If the Board approves the terms of the informal settlement agreement, the Chairman of the Board will sign the Consent Order on behalf of the Board. The Consent Order is effective from the date of signature of the Chairman of the Board, unless the Consent Order expressly provides otherwise.

8. If the Board does not approve the terms of the settlement agreement, the Chairman of the Board will not sign the Consent Order and the Consent Order will not

take effect. The matter will be referred again for formal hearing.

9. The terms of the informal settlement agreement must serve the public's interest.

(e) Hearings

1. Any licensee aggrieved by a decision of the Investigative Committee and who disagrees with the recommendations of the Investigative Committee may, in addition to entering into negotiations with Board counsel, request a hearing before the full Board. The hearing request shall be made no later than thirty (30) days of the date noted on the initial consent order.

2. A quorum of the Board members shall sit for the hearing or the Board may appoint a private Hearing Officer to hear the matter.

3. The Chair of the Board or Hearing Officer will preside at the hearing, and will rule on all pre-hearing motions and evidentiary issues. All pre-hearing motions must be made in writing and filed with the Board. Copies of motions and response thereto must be served on the opposing party. Service of motions or responses is complete upon placing the same in the mail. Each motion or response thereto will contain a certificate indicating the date on which the motion was served on the opposing party.

4. No party will be entitled to any pre-hearing discovery without prior approval of the Board or Hearing Officer. Discovery must be requested by Motion, and this Motion must identify the type of information requested and the intended method of discovering it. The opposing party will be given an opportunity to respond to such motion. The Board or Hearing Officer may order discovery for good cause shown, so long as permitting the discovery will not unreasonably delay the hearing of the matter. Any discovery must be clearly related to the allegations contained in the Administrative complaint.

5. If the Board appoints a Hearing Officer, any party desiring to subpoena the attendance of any person at a hearing or the production of documents via a subpoena duces tecum must apply to the Hearing Officer for such a subpoena, pursuant to Code of Ala. 1975, 41-22-12(c). Such application will be made by motion, and a copy of the motion will be served on opposing party in the method previously described for service of motions. The opposing party will be given an opportunity of three (3) days to object to the issuance of the subpoena.

6. Both the Board and the Respondent will be entitled to present and examine witnesses, to cross-examine witnesses, to introduce evidence, and to be represented by counsel.

7. The hearing will be conducted in the following order: opening statement by the Board, opening statement by the Respondent, presentation of the case-in-chief by the Board, presentation of the Respondent's case, presentation of rebuttal evidence by the Board, closing argument by the Board, closing argument by the Respondent. The Board or Hearing Officer retains the discretion to take evidence out of order for good cause shown. Either the Board or Respondent may waive opening or closing arguments. The hearing will be conducted in accordance with Sections 41-22-12 and 41-22-13, Code of Ala.1975, and other applicable provisions of the Alabama Administrative Procedures Act.

8. If heard by an appointed Hearing Officer, he or she shall render a written recommendation with findings of fact and conclusions of law to the Board by the sooner of its next board meeting or within thirty (30) days. If heard by the Board, the Board's attorney shall produce written findings of fact and conclusions of law for the Board's approval at the next scheduled board meeting. After approval or modification of the findings of fact and conclusions of law, the board shall, by a majority vote of the Board, issue an order recommending disciplinary action against the licensee or dismissing the complaint.

9. The Board (with the exception of that Board member who served on the Investigative Committee for the complaint and any other board member who is biased or who has a conflict of interest) will review the recommended findings of fact and conclusions of law and determine whether they should be adopted, amended or overruled. If a majority of the members of the Board are unable to vote because of bias, conflict of interest or service on the Investigative Committee, the Hearing Officer's findings of fact and conclusion of law will constitute ASBM's final order.

10. The Board will issue a final order containing its findings of fact, conclusion of law, and discipline, if any. This final order shall comply with the requirements of Section 41-22-16 of the Code of Ala.1975. A majority of the Board members rendering the decision must reach accord for the decision to be final.

1. The Respondent may appeal a final order of the Board to the Circuit Court of Montgomery County. Said appeal

must follow and meet the requirements for appeal as stated in Code of Ala. 1975, 41-22-20.
Author: Alabama State Board of Midwifery
Statutory Authority: Code of Ala. 1975, §§34-19-15, et seq.
History: **New Rule:** Filed September 24, 2018; effective November 9, 2018. **Amended:** Published January 31, 2021; effective March 16, 2020.

582-X-4-.05 Records Of Complaints.

The ASBM shall maintain a copy of each complaint filed and related documents.
Author: Alabama State Board of Midwifery
Statutory Authority: Code of Ala. 1975, §§34-19-15, et seq.
History: **New Rule:** Filed September 24, 2018; effective November 9, 2018. **Amended:** Published January 31, 2021; effective March 16, 2020.

582-X-4-.06 Disciplinary Action Guidelines.

(1) The Complaint Review Committee shall consider the following factors when taking or recommending disciplinary action:

(a) the severity of the offense;

(b) the danger to the public;

(c) the number of repetitions of offenses;

(d) the length of time since date of the last alleged violation;

(e) any other disciplinary actions taken against the LM;

(f) the length of time the LM has practiced;

(g) the extent of the client's injuries, physical or otherwise alleged to have been caused by the Licensed Midwife;

(h) any efforts at rehabilitation or remediation by the LM;

(i) prior determinations by the ASBM that the LM has violated Act 2017-383 and/or rules; and

(j) any other mitigating or aggravating circumstances.
Author: Alabama State Board of Midwifery
Statutory Authority: Code of Ala. 1975, §§34-19-15, et seq.

History: New Rule: Filed September 24, 2018; effective November 9, 2018. **Amended:** Published January 31, 2021; effective March 16, 2020.

582-X-4-.07 Disciplinary Action.

(1) 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:

(a) denial of the person's application for licensure; issuance of a written warning or reprimand;

(b) limitation or restriction of the LM's practice for a specified time;

(c) suspension of the LM's license for a specified time;

(d) revocation of the LM's license;

(e) required participation by the LM in counseling and treatment for psychological impairment, or intemperate use of alcohol or drugs;

(f) required participation by the LM in one or more education or continuing education programs;

(g) required practice by the LM under the direction of a preceptor for a specified period;

(h) probation of any penalty imposed;

(i) 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;

(j) imposition of conditions for reinstatement that the midwife must satisfy before the Midwifery Board reissues a license following suspension, revocation, or voluntary surrender;

(k) The board may refer a complaint to the proper authorities;

(l) assessment of an administrative penalty against the Licensed Midwife not to exceed $1,000 for each violation.

(2) 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.

(3) Failure to comply. Failure to comply with an ASBM order shall constitute grounds for additional disciplinary action.

(4) 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: **New Rule:** Filed September 24, 2018; effective November 9, 2018. **Amended:** Published January 31, 2021; effective March 16, 2020.

Ed. Note: Rule .07 was repealed and .08 was renumbered .07 per certification published January 31, 2020; effective March 16, 2020. See history below:

582-X-4-.07R **Complaint Investigation (REPEALED).**

(REPEALED)
Author: Alabama State Board of Midwifery
Statutory Authority: Code of Ala. 1975, §§34-19-15, et seq.
History: **New Rule:** Filed September 24, 2018; effective November 9, 2018. **Repealed:** Published January 31, 2021; effective March 16, 2020.

582-X-4-.08 **Complaint Disposition And Appeals.**

(1) The ASBM may, unless precluded by law or this section, make a disposition of any complaint by agreed order.

(2) 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.

(3) 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: **New Rule:** Filed September 24, 2018; effective November 9, 2018.

Ed. Note: Rule .09 was renumbered .08 per certification published January 31, 2020; effective March 16, 2020.

582-X-4-.09 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, §§34-19-15, et seq.
History: New Rule: Filed September 24, 2018; effective November 9, 2018. **Amended:** Published January 31, 2021; effective March 16, 2020.

Ed. Note: Rule .10 was renumbered .09 per certification published January 31, 2020; effective March 16, 2020.