

DRAFT FINAL REGULATIONS

**GOVERNING THE PRACTICE OF
LICENSED MIDWIVES**

VIRGINIA BOARD OF MEDICINE

Title of Regulations: 18 VAC 85-130-10 et seq.

**Statutory Authority: § 54.1-2400 and Chapter 29
of Title 54.1 of the *Code of Virginia***

Effective Date:

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Part I. General Provisions.

18VAC85-130-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2957.7 of the Code of Virginia.

“Midwife”

“Practicing midwifery”

B. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

“Board” means the Virginia Board of Medicine.

“Client” means a person receiving midwifery care and shall be considered synonymous with the word “patient.”

“Controlled substance” means a drug, substance or immediate precursor in Schedules I through VI as set out in the Drug Control Act.

“CPM” means the Certified Professional Midwife credential issued by the North American Registry of Midwives.

“NARM” means the North American Registry of Midwives.

18VAC85-130-20. Public participation.

A separate board regulation, 18VAC85-10-10 et seq., provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.

18VAC85-130-30. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The application fee for a license to practice as a midwife shall be \$277.
2. The fee for biennial active license renewal shall be \$312; the additional fee for late renewal of an active license within one renewal cycle shall be \$105.
3. The fee for biennial inactive license renewal shall be \$168; the additional fee for late renewal of an inactive license within one renewal cycle shall be \$55.
4. The fee for reinstatement of a license that has expired for a period of two years or more shall be \$367 in addition to the late fee for each year in which the license has been lapsed, not to exceed a total of four years. The fee shall be submitted with an application for licensure reinstatement.
5. The fee for a letter of good standing/verification of a license to another jurisdiction shall be \$10.
6. The fee for an application for reinstatement if a license has been revoked or if an application for reinstatement has been previously denied shall be \$2,000.
7. The fee for a duplicate wall certificate shall be \$15.
8. The fee for a duplicate renewal license shall be \$5.
9. The fee for a returned check shall be \$25 35.

Part II. Requirements for Licensure and Renewal of Licensure.

18VAC85-130-40. Criteria for initial licensure.

A. An applicant for board licensure shall submit:

1. The required application on a form provided by the board and the application fee as prescribed in 18VAC85-130-30;

2. Evidence satisfactory to the board of current certification as a CPM; and

3. A report from NARM indicating whether there has ever been any adverse action taken against the applicant.

B. If an applicant has been licensed or certified in another jurisdiction, the applicant shall provide information on the status of each license or certificate held and on any disciplinary action taken or pending in that jurisdiction.

18VAC85-130-45. Practice while enrolled in an accredited midwifery education program.

A person may perform tasks related to the practice of midwifery under the direct and immediate supervision of a licensed doctor of medicine or osteopathic medicine, a certified nurse midwife, or a licensed midwife while enrolled in an accredited midwifery education program or during completion of the North American Registry of Midwives' Portfolio Evaluation Process Program without obtaining a license issued by the board until such person has taken and received the results of any examination required for CPM certification or for a period of three years, whichever occurs sooner. For good cause shown, a person may request that the board grant any extension of time beyond the three years, for a period not to exceed one additional year.

18VAC85-130-50. Biennial renewal of licensure.

A. A licensed midwife shall renew licensure biennially during the midwife's birth month in each odd-numbered year by:

1. Paying to the board the renewal fee as prescribed in 18VAC85-130-30; and
2. Attesting to having current, active CPM certification by NARM.

B. A licensed midwife whose license has not been renewed by the first day of the month following the month in which renewal is required shall not be considered licensed in Virginia.

C. An additional fee to cover administrative costs for processing a late application renewal shall be imposed by the board as prescribed by 18VAC85-130-30.

18VAC85-130-60. Inactive licensure.

A. A licensed midwife who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive license.

1. The holder of an inactive license shall not be required to maintain current, active certification by NARM.
2. An inactive licensee shall not be entitled to perform any act requiring a license to practice midwifery in Virginia.

B. An inactive licensee may reactivate licensure by:

1. Payment of the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure for the biennium in which the license is being reactivated; and
2. Submission of documentation of having current, active certification by NARM.

C. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of §54.1-2915 of the Code of Virginia or any provision of this chapter.

18VAC85-130-70. Reinstatement.

A. A licensed midwife who allows licensure to lapse for a period of two years or more and chooses to resume practice shall submit to the board a reinstatement application, information on practice and licensure in other jurisdictions for the period in which the license was lapsed in Virginia, proof of current, active certification by NARM, and the fee for reinstatement of licensure as prescribed in 18VAC85-130-30.

B. A licensed midwife whose license has been revoked by the board and who wishes to be reinstated must make a new application to the board, hold current, active certification by NARM, and pay the fee for reinstatement of a revoked license as prescribed in 18VAC85-130-30.

Part III. Practice Standards.

18VAC85-130-80. Disclosure requirements.

A licensed midwife shall provide written disclosures to any client seeking midwifery care. The licensed midwife shall review each disclosure item and obtain the client's signature as evidence that the disclosures have been received and explained. Such disclosures shall include:

1. A description of the licensed midwife's qualifications, experience, and training;

2. A written protocol for medical emergencies, including hospital transport, particular to each client;
3. A statement as to whether the licensed midwife has hospital privileges;
4. A statement that a licensed midwife is prohibited from prescribing, possessing or administering controlled substances;
5. A description of the midwives' model of care;
6. A copy of the regulations governing the practice of midwifery;
7. A statement as to whether the licensed midwife carries malpractice or liability insurance coverage, and if so, the extent of that coverage;
8. An explanation of the Virginia Birth-Related Neurological Injury Compensation Fund and a statement that licensed midwives are currently not covered by the Fund; and
9. A description of the right to file a complaint with the Board of Medicine and with NARM and the procedures and contact information for filing such complaint.

18VAC85-130-90. Confidentiality.

A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

18VAC85-130-100. Client records.

A. Practitioners shall comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of client records.

B. Practitioners shall provide client records to another practitioner or to the client or the client's personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage client records and shall maintain timely, accurate, legible and complete client records. Practitioners shall clearly document objective findings, decisions and professional actions based on continuous assessment for on-going midwifery care.

D. Practitioners shall document a client's decisions regarding choices for care, including informed consent or refusal of care. Practitioners shall clearly document when a client's decisions or choices are in conflict with the professional judgment and legal scope of practice of the licensed midwife.

E. Practitioners shall maintain a client record for a minimum of six years following the last client encounter with the following exceptions:

1. Records of a minor child shall be maintained until the child reaches the age of 18 or becomes emancipated, with a minimum time for record retention of six years from the last client encounter regardless of the age of the child ;

2. Records that have previously been transferred to another practitioner or health care provider or provided to the client or the client's personal representative do not have to be kept for a minimum of six years following the last client encounter; or

3. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

F. From (insert effective date of regulations) practitioners shall in some manner inform all clients concerning the time frame for record retention and destruction. Client records shall only be destroyed in a manner that protects client confidentiality, such as by incineration or shredding.

G. When a practitioner is closing, selling or relocating a practice, the practitioner shall meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the client's choice or provided to the client.

18VAC85-130-110. Practitioner-client communication; termination of relationship.

A. Communication with clients.

1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately inform a client or the client's legally authorized representative of the client's assessment and prescribed plan of care. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a treatment or procedure directed by the practitioner.

2. A practitioner shall present information relating to the client's care to a client or the client's legally authorized representative in understandable terms and encourage participation in the decisions regarding the client's care.

3. Before any invasive procedure is performed, informed consent shall be obtained from the client. Practitioners shall inform clients of the risks, benefits, and alternatives of the recommended procedure that a reasonably prudent licensed midwife practicing in Virginia would tell a client. In the instance of a minor or a client who is incapable of making an informed decision on the client's own behalf or is incapable of communicating such a decision due to a

physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.

B. Termination of the practitioner/client relationship.

1. The practitioner or the client may terminate the relationship. In either case, the practitioner shall make a copy of the client record available, except in situations where denial of access is allowed by law.

2. Except as provided in § 54.1-2962.2 of the Code of Virginia, a practitioner shall not terminate the relationship or make services unavailable without documented notice to the client that allows for a reasonable time to obtain the services of another practitioner.

18VAC85-130-120. Practitioner responsibility.

A. A practitioner shall:

1. Transfer care immediately in critical situations that are deemed to be unsafe to a client or infant and remain with the client until the transfer is complete;

2. Work collaboratively with other health professionals and refer a client or an infant to appropriate health care professionals when either needs care outside the midwife's scope of practice or expertise; and

3. Base choices of interventions on empirical and/or research evidence that would indicate the probable benefits outweigh the risks.

B. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of the midwife's practice or for which the midwife is not trained and individually competent;

2. Knowingly allow apprentices or subordinates to jeopardize client safety or provide client care outside of the apprentice's or subordinate's scope of practice or area of responsibility.

Practitioners shall delegate client care only to those who are properly trained and supervised; and

3. Exploit the practitioner/client relationship for personal gain.

18VAC85-130-130. Advertising ethics.

A. Any statement specifying a fee, whether standard, discounted or free, for professional services which does not include the cost of all related procedures, services and products which, to a substantial likelihood, will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising a discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment which is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bona fide emergency. This provision may not be waived by agreement of the client and the practitioner.

C. Advertisements of discounts shall disclose the full fee that has been discounted. The practitioner shall maintain documented evidence to substantiate the discounted fees and shall make such information available to a consumer upon request.

D. A licensee shall disclose the complete name of the board which conferred the certification when using or authorizing the use of the term “board certified” or any similar words or phrase calculated to convey the same meaning in any advertising for the licensee’s practice.

E. A licensee of the board shall not advertise information which is false, misleading, or deceptive. For an advertisement for a single practitioner, it shall be presumed that the practitioner is responsible and accountable for the validity and truthfulness of its content. For an advertisement for a practice in which there is more than one practitioner, the name of the practitioner or practitioners responsible and accountable for the content of the advertisement shall be documented and maintained by the practice for at least two years.

18VAC85-130-140. Vitamins, minerals and food supplements.

A. The recommendation or direction for the use of vitamins, minerals or food supplements and the rationale for that recommendation shall be documented by the practitioner. The recommendation or direction shall be based upon a reasonable expectation that such use will result in a favorable client outcome, including preventive practices, and that a greater benefit will be achieved than that which can be expected without such use.

B. Vitamins, minerals, or food supplements, or a combination of the three, shall not be sold, dispensed, recommended, prescribed, or suggested in doses that would be contraindicated based on the individual client’s overall medical condition and medications.

C. The practitioner shall conform to the standards of the practitioner's particular branch of the healing arts in the therapeutic application of vitamins, minerals or food supplement therapy.

18VAC85-130-150. Solicitation or remuneration in exchange for referral.

A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility as defined in §37.2-100 of the Code of Virginia, or hospital as defined in §32.1-123 of the Code of Virginia.

Remuneration shall be defined as compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by Title 42, §1320a-7b(b) of the United States Code, as amended, or any regulations promulgated thereto.

18VAC85-130-160. Sexual contact.

A. For purposes of § 54.1-2915 A 12 and A 19 of the Code of Virginia and this section, sexual contact includes, but is not limited to, sexual behavior or verbal or physical behavior which:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the client, or both; or
2. May reasonably be interpreted as romantic involvement with a client regardless of whether such involvement occurs in the professional setting or outside of it.

B. Sexual contact with a client.

1. The determination of when a person is a client for purposes of § 54.1-2915 A 19 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and

context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a client until the client-practitioner relationship is terminated.

2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a client does not change the nature of the conduct nor negate the statutory prohibition.

C. Sexual contact between a practitioner and a former client.

Sexual contact between a practitioner and a former client after termination of the practitioner-client relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care. For purposes of this section, key third party of a client shall mean: spouse or partner, parent or child, guardian, or legal representative of the client.

E. Sexual contact between a supervisor and a trainee or apprentice shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care.

18VAC85-130-170. Refusal to provide information.

A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.

Certification

I certify that this regulation is full, true, and correctly dated.

William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

Date: _____