Medical Board of California
Licensed Midwife Complaint/Disciplinary Activity
July 1, 2002 through June 30, 2007

Complaints Received
Violation Types/Total

Fraud	1
Incompetence/Negligence	24
Non-Jurisdictional	1
Unlicensed Practice	12
Unprofessional Conduct	13

Disciplinary Action Taken
Violation Type/Total

Gross Negligence	2
Unprofessional Conduct	1
Violation of Code Section 2519	1

Licensed Midwife Complaint/Disciplinary Information
July 1, 2002 through June 30, 2007

Disciplinary Decisions

Overall reason(s) for action being taken:

1 – Failed to monitor baby's heart rate during contractions. Low APGAR score; baby stopped breathing after 14 hours

1 – Failed to recognize process and risks of labor; prolonged 1st and 2nd stages of labor; failed to disclose concerns/risks with mother and make back up arrangement or consultation

1 – Allowed an unlicensed person to assist in delivery putting mother and baby as risk

1 – Negligent care of a high risk client with fetus in breech position

Complaints

Overall reasons for complaint being filed:
(These are general/summaries of the reasons why a complaint was filed with the board within the time period indicated. Further action, investigation, or disciplinary action may or may not have been taken based upon related facts/evidence.)

13 – Negligent care and treatment during labor/delivery
6 – Negligent care and treatment of client
2 – Practicing w/out supervision with high risk client
2 – Negligent prenatal care
2 – Failure to have supervising MD available
2 – Provided prescription medication to client
2 – Failure to do continuing education
1 – Operating midwifery school inappropriately
1 – Failed to register the birth of an infant
1 – Attempted VBAC on high risk client
1 – Poor supervision of student midwife
1 – Failure to abide by contract and provide service to a client
1 – Conviction of a crime/failed to disclose
1 – Allowing LM assistant to care for client while LM was out of town
1 – Providing services beyond scope of practice
1 – Failure to release records
1 – Abandoned client
1 – Unlicensed practice
1 – Fraudulent billing

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August 15, 2006

RE: Retraining program for California LMs

Dear Dr Fantozzi,

Per your request, I am developing a program for the rehab and/or retraining of California licensed midwives subject to disciplinary actions by the Board. The standard for remedial training would come directly from the Licensed Midwifery Practice Act of 1993 (LMPA) curriculum and pertinent regulations adopted by the MBC since 1993.

I have only addressed disciplinary situations and *not* the ground-up *retraining* of LMs who have not practiced for 10 or more years. I believe that re-certification for formerly retired LMs should be done by an academically-based midwifery program. Since there are no MBC-approved midwifery training programs in California, trying to retrain retired LMs in isolation from formal academic resources would be too extensive for my personal and professional abilities.

Karen Ehrlich has also offered to work with me in designing and administering a rehab program. However, this letter is just my own personal first draft. I would appreciate your feedback and any constructive critique. Nothing is set in stone nor is it ready for public viewing.

As you know, I am familiar with the PACE program developed by Dr Norcross of UCSD to evaluate and rehabilitate at-risk physicians. I also have downloaded several informative documents describing the PAR program -- Practitioner Achievement Review -- which is a *prospective* "360-degree" evaluation program mandated by the College of Physicians and Surgeons of Alberta (Canada).

Eventually I hope to see California LMs participate voluntarily in the 360-degree prospective review process, so as to deal *preventatively* rather than *punitively* with quality of care issues. Clearly it is in the best interests of consumers and their unborn or newborn babies to have their maternity care be provided by LMs who are competent, ethical, responsible and socially adept. This would reduce the number of disciplinary cases that would require any form of rehabilitation, to the advantage of us all.

Developing the Rehab Process

After many false starts, I finally reached Elizabeth Gilmore, the current director of the New Mexico National College of Midwifery. She has agreed to work with Karen Ehrlich and I, in conjunction with the Board, to develop an effective and affordable rehab program for California midwives. Ms. Gilmore concluded that it would be possible to use current materials and evaluation processes from the National College of Midwifery as didactic testing materials. She also suggested that we adopt a clinical exam process model after the Seattle Midwifery School Challenge Mechanism. The SMS challenge process used the NARM certification criteria to define the characteristics of clinical competency as they are currently defined *by* the midwifery profession.

One of many advantages of affiliating with the National College of Midwifery is that the program can be administered completely from *within California* (i.e., respondent LM would ***not*** need to travel to New Mexico), and yet provide the services of an educational program approved by MEAC and the US Department of Education. As you know, there are no approved midwifery training programs domiciled in the state of California. The cost of the program, best as I can determine, would be approximately $1,000 to $2,000. This includes compensating the evaluator's professional time at $100 a day (standard honorarium for MBC members when attending to MBC business) and fees to use test materials originating with the NCM or NARM.

For clinical skills we would refer to the extensive and detailed lists of clinical shills developed by NARM and used by all the currently approved midwifery training programs. These were also used by Seattle Midwifery School to document appropriate clinical skills in conjunction with the Challenge process. California LM evaluators would be official preceptors for the NCM program, former evaluators for Seattle Challenge Mechanism or the NARM clinical examination. I am one of the original evaluators for the Challenge process, and have administered the SMS clinical exam to several candidates who successfully completed the licensing process.

Liability Issues & Retesting

Last but not least is policy development. The first issue is the LM candidate's right to retake a failed (or contested) part of the exam. In general, exams of this sort permit a candidate to repeat at least once any part failed (some permit two retakes), with additional fees for the cost of the evaluator's time and any proprietary exam materials. I would strongly suggest a different clinical examiner in situations that are contested by the candidate, with the possibility of video taping contested re-takes. If there is still a strong difference of opinion about whether the candidate has indeed performed satisfactory, I would suggest that a contested case be referred to the Midwifery Advisory Council to provide an informed opinion that would to be rendered to the DOL, who would make the final ruling.

The other policy issue is potential liability/litigation. I'm referring to situations that might result from an LM respondent's failure to successfully complete the program, accompanied by a claim that her failure was the result of a discriminatory, prejudiced, faulty or unfair process. Any program that I developed or administered would go the extra mile (or even two!) to be as fair as humanly possible. But we both know that these situations can engender a great deal of grief for all concerned whenever a respondent-licentiate is unable to satisfactorily demonstrate competency.

My suggestion in that regard is to configure the rehab process so that the LM's participation is voluntary, that is, the candidate would have the choice to surrender her license up-front OR voluntarily participate in the rehab process, agreeing *a priora* to abide by the final decision of the

DOL, after all retakes and reviews are concluded. I don't want a rehab program tied up in contentious litigation every time someone is unable to complete it. My experience bears out the truism that "no good deed goes unpunished". As the unpaid administrator of the College of Midwives professional liability insurance consortium, I was sued by our malpractice *carrier* in an outrageous and ultimately illegal strategy *by them* to avoid having to pay out a legitimate claim in a New Mexico case by side-lining the legal process in a California court. Eventually, the matter was appropriately concluded (they finally gave up!), but only after years of trips to the courthouse and lots of personal time and money.

The rehab process would include the following steps:

- A request for retraining by the LM, who would be offered the alternative of a remedial or rehab process instead of surrendering her licensed - this request document would authorize the rehab team to receive pertinent information to asses her case

- Using documents generated by the disciplinary process, an inventory would be conducted between the rehab team and MBC staff with pertinent input, so as to efficiently define the educational problem and/or identify deficiencies in clinical skills

- Development of a candidate-specific evaluation process (i.e. a "pre-test") of the respondent's knowledge base or clinical skills in the identified areas of concern

- After a review of the identified deficiencies and, using the pre-test evaluation and documents from the complaint, the rehab team would develop a corrective curriculum. The length of time allowed for this stage would depend on how extensive that curriculum was.

- When the respondent LM had concluded the study phase, a didactic exam would be administered and proctored by Karen Ehrlich, California LM, who is currently recognized as an official preceptor for NCM students.

- After successfully completing the didactic exam, a clinical exam relative to the deficiencies identified would be configured and administered by a credentialed evaluator.

- A report of this inventory and the candidate's pass/fail status would be generated for the DOL

Again I want to emphasis that this is a first draft. I am inviting your feedback and constructive critique. I have included the address and email for the NCM, should you or other MBC staff wanted to contact her directly. I will also be sending Elizabeth Gilmore a copy of my letter. I look forward to your reply.

Faith Gibson, LM, CPM
Director, California College of Midwives / ACCM

cc: Mr Herman Hill, MBC; Licensing Operations

Elizabeth Gilmore, LM, Director, National College of Midwifery; 209 State Road 240 Taos, NM 87571. Tel 505.758.8914; fax 505.758.0302; info@midwiferycollege.org

COLLEGE OF PHYSICIANS AND SURGEONS OF ALBERTA

POLICY

Re-Entry into Practice

CPSA Policy

Revised June 2001

1. Registered practitioners planning to return to clinical medical practice after an absence of three years or more, or planning to change clinical disciplines within medicine, must first notify the College and complete an assessment and retraining satisfactory to the Registrar.

2. The following shall be considered by the Registrar regarding assessment and retraining:

   - Previous training and experience
   - Previous performance in practice
   - Related activity during absence from practice
   - Reasons for absence from practice
   - Intended scope of practice

3. Assessments may include but are not restricted to one or more of the following:

   - Observed performance in practice-settings
   - Structured clinical encounters
   - Structured oral interviews
   - Simulators
   - Written examinations

4. Retraining may include but is not limited to the following:

   - Directed self-study
   - Traineeships with identified preceptors
   - Formal residency training programs
   - Supervised practice

5. Physicians shall be responsible for the costs of their assessments and retraining.

6. Restrictions may be attached to a physician's registration based on the results of an assessment.

7. Only physicians who are, or were previously, registered for unsupervised medical practice in Alberta may appeal a decision of the Registrar in regard to the above to Council.

State of California

Department of Consumer Affairs
Medical Board of California

Memorandum

To : Members, Midwifery Committee **Date:** October 13, 2006

From : Herman Hill, Analyst
Licensing Operations

Subject : **Feasibility Discussion – Midwifery Assessment and Clinical Education Program Implementation**

Issue:

During discussions that occurred at the DOL Meeting on May 11-12, 2006, Dr. Richard Fantozzi, President, Division of Licensing, directed that licensing staff investigate the feasibility of implementing a Midwifery "re-entry/retraining" program. As this discussion unfolded, there was concern regarding how the Midwifery Education Accreditation Council (MEAC) and the midwifery community at-large handle this issue. Other issues that emerged as a result of this discussion included:

- Determining whether any re-entry programs are operating nationwide and within the profession of midwifery; and
- What happens to midwives who have been out of practice for a period of time (not specified) and wants to come back to the profession.

Background:

The search for information relative to this issue began with conducting an interview with Mary Ann Baul, Executive Director, Midwifery Education Accreditation Council (MEAC). This agency is one of several "directly supporting" agencies of California's Licensed Midwife Program. Other equally supportive agencies will also be discussed as it relates to information pertinent to midwifery re-entry/retraining programs.

Midwifery Education Accreditation Council (MEAC)

The purpose of MEAC is to establish standards for the education of competent midwives and to provide a process for self-evaluation and peer evaluation for diverse education programs. The U.S. Secretary of Education has listed MEAC as a nationally recognized accrediting agency for post secondary midwifery education programs. MEAC's responsibilities are directly related to midwifery education programs (schools) and not to developing, maintaining, or evaluating possible reentry or similar programs, if they currently exist. For this reason, MEAC should not be expected to and has fundamentally declined to provide a framework for any retraining, re-entry, or rehabilitative programs that may be a result of this administrative inquiry. During previous assessments of midwifery education programs, none were found to have implemented re-entry or retraining programs for midwives.

North American Registry of Midwives (NARM)

The subject of existing reentry programs for midwives was posed to NARM (Ida Darraugh, Director of Testing). The director's response indicated that there was no specifically designed 're-entry" programs monitored or administered by NARM. However, the director indicated that NARM had received a recent request from the state of Florida to allow one candidate to retake the NARM Certification examination because she had not been in practice for a few years but meets the requirements for licensing in Florida. The NARM examination has not been redesigned to address this particular situation.

The director further discussed that each state has different regulations regarding re-entry. Licensing staff's review of Utah, Virginia, and Texas midwifery practice statutes indicates no such information as it relates to a definable re-entry program. The director also indicated that some states only require retaking the NARM examination as being part or all of the remediation for keeping or being reissued their license or certification.

NARM's published information contained in their Candidate Information Bulletin (CIB) provides information concerning "Suspension or Revocation of Application", "Revocation of Certification", and "Recertification". None of these processes could leave one to assume that a re-entry program that embraces a certain level of scrutiny beyond a written examination is offered to the midwife. Further, the director indicated that NARM has revoked only three certifications, all of whom were not licensed midwives practicing in California. None of the revoked certifications have been from a state with licensing statutes, nor have the former CPMs whose certifications/licenses had been previously revoked have reapplied for certifications or re-licensure. NARM publishes revocation notices in the CPM news, which is available on NARM's website. The director felt that it would not be of any direct benefit to inform the MBC of these revocation notices.

In order for eligible midwives to acquire the nationally recognized "certified professional midwives" (CPM) designation, they must be administered and successfully pass NARM's comprehensive certification examination. The national certification does not qualify the midwife for California licensure. However, the comprehensive examination is the Medical Board of California's licensing examination for midwives licensed in California, as required by statute.

Finally, the director validated that NARM's existing policies concerning certification does not meet the probable standard of a re-entry program and that it is not NARM's responsibility to monitor CPMs for compliance with state regulations. It is for this reason that NARM would not be involved unless a complaint was received by NARM. The effect of that notification would imperil the midwife to de-certification actions as a CPM.

UCSD Physician Assessment and Clinical Education (PACE) Program

Dr. Carole Sussman, Associate Director and COO, responded to a licensing staff e-mail and telephone inquiry concerning whether the existing PACE program for physicians could be tailored to the probable needs of licensed midwives. Dr. Sussman mentioned that the current PACE Program was designed expressly for healthcare professionals, with emphasis on physicians and surgeons. The PACE Program consists of a two-phased approach. Phase I of the program is a two-day clinical competency assessment that uses a variety of evaluative methods to provide an overall picture of the physician's skills, knowledge, and physical health. Phase II further evaluates the participant's skills and knowledge in a "clinical setting" by way of discussion with the faculty,

examination, and physician participation. The length of this portion of the evaluation is at least one week. Dr. Sussman further stated that it would be highly unlikely that the program could serve midwives in its current form and that a comparable program would have to be created for midwives. No further information or guidance relative to re-entry programs was provided. It was agreed that a PACE-like model could be used for midwives.

American College of Nurse-Midwives (ACNM)

Contact was made with several ACNM program directors regarding re-entry programs. It was disclosed that ACNM has created a "pilot program" titled "ACNM Reentry to Midwifery Practice Program". The purpose of the program appears to be designed "for midwives who are not currently engaged in the practice of midwifery and must update their skills and knowledge of current clinical practice after an extended absence to meet prevailing standards." The program consists of two components that include: 1) Continuing Education, and 2) Clinical Refresher.

The program guidelines identified certain information that concludes that re-entry or "refresher" programs were previously recognized during the late 1960s through the mid-1980s. During this period, foreign-prepared nurse-midwives were required to complete one of these refresher programs before being certified (not licensed) as a nurse-midwife in the United States. These refresher programs no longer exist, although the term "refresher" is used to describe the program designed for "reentering midwives" by one of the ACNM accredited education programs, which includes the following:

- OHSU Nurse-Midwifery Program, Portland, OR;
- San Diego State University, San Diego, CA;
- Baystate Medical Center. Springfield, MA;
- University of Medicine and Dentistry of New Jersey, Newark, NJ;
- University of Minnesota, School of Nursing, Minneapolis, MN; and the
- University of Puerto Rico, San Juan PR

The above listed ACNM accredited midwifery education programs have not been formally approved by the Medical Board of California. It could not be determined during this exchange whether the "pilot reentry programs" had been implemented at these locations. ACNM would not release information that disclosed the number of sites, if any, where the pilot program is being tested. Further, no additional program provisions considered or included conditions where the midwife had been referred to the program due to the imposition of disciplinary action that warrants competency assessments before re-licensing or re-certification.

Licensed Midwife Submission – Retraining Program for California Licensed Midwives:

During the conduct of this staff inquiry, contact was made with Faith Gibson, who presented a draft recommendation for a retraining program for midwives. This draft recommendation is the result of collaborations between Karen Ehrlich, and Elizabeth Gilmore, Director of the National College of Midwifery, Taos, New Mexico. Ms. Gibson, Ehrlich, and Gilmore are California licensed midwives. The latter is a Board-approved post secondary midwifery education program (school) currently in good standing with the Medical Board of California, Division of Licensing.

In summary, Ms. Gibson offers a process where midwives who have not practiced for extended periods of time would participate, on a voluntary basis, in the "360-degree prospective review process", similar in scope to that of the UCSD PACE model. Ms. Gibson's draft recommendation has been presented to Dr. Fantozzi in an earlier forum. Staff reviewed the three-paged document and found that the elements of the retraining process or design presented potential opportunities for a California retraining program for midwives. However, in its current form, revisions and structure may be required.

Discussion:

The information obtained during this inquiry did not validate the practicality or feasibility of implementing a re-entry or retraining program for midwives in California. At the core of this issue is the challenge of how the framework in which minimum standard competencies of the midwife will be assessed. Further, other issues facing the implementation of this type program that must be resolved include:

- **The design of the practical components of the program, e.g., competency assessment, peer review, retraining, and assessment outcomes, and other areas of concern;**
- **Whether or not the program would be voluntary upon request of the midwife, or mandatory, as a result of the imposition of disciplinary recommendations from the Division of Licensing;**
- **Probable revision of existing statutes and regulations to support program implementation, under the "force of law", which currently does not exist; and**
- **Program costs to the potential midwife involved and to the Medical Board of California to sustain this program over time. This issue may present circumstances that could be adverse to the forward movement of program implementation. The reason being that if high to nominal cost factors are not mitigated, midwives who may benefit from this program approach may not participate, due to the probability of high costs.**

Conclusions:

The examination of existing re-entry programs for midwives could not disclose any material or concrete information regarding any programs currently operating that could be considered a reentry program or model for midwives. NARM's existing programs or processes do not compare to what one would expect of a reentry program for an allied healthcare professional. The ACNM "Pilot Reentry Program" may be operating at several locations, but actual locations were not disclosed so that a preliminary assessment could be made of its feasibility. ACNM has not published any anticipated outcomes, performance measures, or expected results for the program. The existing PACE Program for healthcare professionals (physicians & surgeons) may not be suitable for midwives in its current configuration. However, using the framework of a PACE-like model may show some promise. The draft recommendation presented by Faith Gibson, with support from Karen Ehrlich and Elizabeth Gilmore, uses the UCSD PACE model, to a certain extent, but might require further revisions and improvements to be recognized as a potential example of a re-entry/retraining program for midwives.

Recommendations:

Due to the absence of any credible or concrete information concerning existing re-entry programs for midwives, this issue of concern could be exploited more fully and effectively by the soon-to-be-created Midwifery Advisory Council for the Division of Licensing. Once the members are impaneled, this subject could be thoroughly pursued by its members, using the resources of the existing midwifery community, in liaison and collaboration with other healthcare professionals. Partnerships could also be re-established with representatives of the California Medical Association (CMA), the American College of Obstetrics and Gynecologists (ACOG), represented midwifery advocacy groups and associations, in furtherance of any progress made to implement a program of this level of significance. Further, The Medical Board of California may be able to more effectively use the Expert Reviewer Program (Licensed Midwives) as an investigative and reporting arm of the Midwifery Advisory Council that would pursue probable alternatives of creating a Midwifery Assessment and Clinical Education Program, with supporting statutory authorities.

I look forward to answering any questions you might have at the meeting. If you have any questions or comments concerning this program proposal for midwives prior to the meeting, please contact me at (916) 263-2393 or by e-mail at hhill@mbc.ca.gov .