REGISTERED MIDWIVES

Jurisprudence Handbook

British Columbia College of Nurses & Midwives

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Last Updated: April 2023

Revision Log

Date	Revisions Made
March 2021	Applied BCCNM branding
April 1, 2023	Updated to remove outdated and inaccurate information and improve clarity

Table of Contents

Introduction

This handbook provides information on the legal and ethical framework of midwifery practice in B.C. BCCNM will make every effort to keep this handbook updated but makes no guarantee as to the currency, completeness, or accuracy of the information. Errors or omissions in BCCNM documents do not affect midwives' obligation under the legislation.

Midwives should not rely on BCCNM's documents as the complete text of the laws and regulations or as a complete statement of the law. Statues and regulations may be amended at any time. Midwives are encouraged to obtain legal advice, whenever appropriate, about laws relevant to practice. BCCNM does not provide registrants with legal advice; however, midwives can refer questions to their professional association and/or malpractice insurer.

Midwifery in B.C.

In B.C., midwives have been regulated and legally recognized as autonomous, independent primary care practitioners since 1998. The midwifery model of practice in B.C. is autonomous, community-based primary care, and incorporates the principles of continuity of care, informed choice, choice of birth setting, collaboration, accountability, ethics, and evidence-based practice. See BCCNM's Midwifery Scope and Model of Practice to review the midwifery model of practice principles.

Indigenous Midwifery

Indigenous midwives are foundational to Indigenous communities. Indigenous midwives provide care to Indigenous families within provincial policies and practice contexts. They often incorporate traditional values and practices in their work. However, due to colonization and ongoing systemic racism in the Canadian health-care system, Indigenous midwifery practice has been taken away from these communities. Despite this, there are Indigenous midwives practicing in communities across Canada and working to regenerate strong Indigenous families by bringing birth closer to home.

Indigenous midwifery honours Indigenous Peoples and their languages, oral cultures, and traditions, and upholds birth as a sacred event. Indigenous midwives help build healthy and safe Indigenous communities in rural and urban areas.

Jurisprudence

Jurisprudence is a legal term that refers to the study or knowledge of law. Midwifery jurisprudence is law that relates specifically to midwifery practice. Each Canadian province/territory has its own legislations, regulations, and standards for midwifery practice.

SOURCES OF LAW

Statutes. A statute is a written law, also called legislation or Acts. Some statutes take priority over other statutes (e.g., *Canadian Charter of Rights and Freedoms*).

Regulations. Regulations are made by the government when a statute permits. Under the *Health Professions Act*, the *Midwives Regulation* outlines midwifery practice.

BCCNM Bylaws. Bylaws describe the governance structure of BCCNM, its board, and committees, and set out rules and procedures for registering and regulating the practice of midwives. Bylaws are made by the BCCNM Board.

Case Law. Case law refers to past court decisions that form part of common law. Courts refer to case law and statutes in determining legal rights and obligations, and then apply those to a case when determining outcomes.

Guiding documents. Though not binding laws themselves, BCCNM publishes official standards, guidelines, and policies that set out the general expectations for the safe, legal, and ethical practice of midwifery in B.C.

Regulatory Framework

Midwives are regulated under B.C.'s *Health Professions Act* (HPA) and the *Midwives Regulation*. This legislation defines the profession's parameters to ensure public safety when the professional's services are used. Midwives work autonomously within a scope of practice as set out in this legislation, collaborating with other health-care professionals as needed.

Midwifery is a *self-regulating* profession in B.C. This means the regulation of midwives is informed by the expertise and specialized knowledge of the profession by including midwives in the BCCNM board and committees.

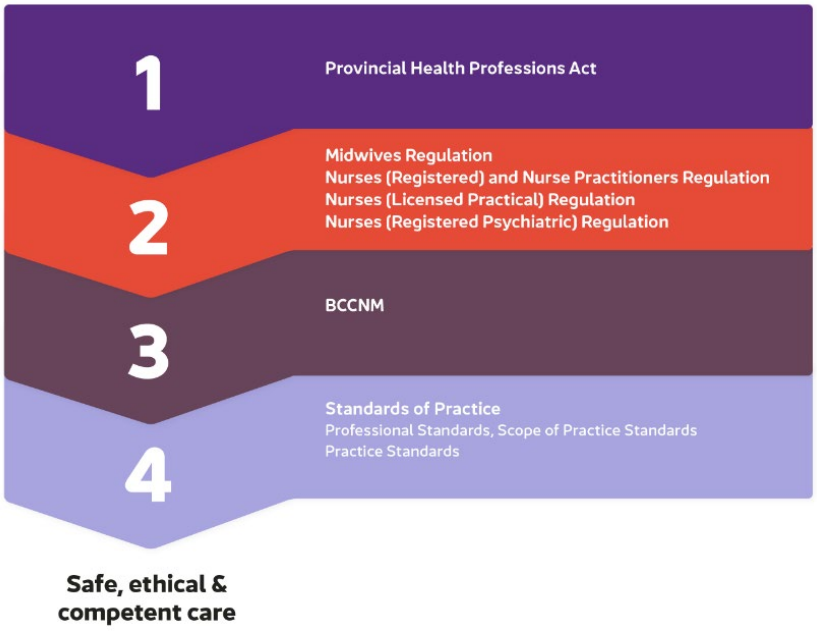
Legislation & Regulation. At the top of the framework (Figure 1) is the *Health Professions Act* under which lie profession-specific regulations, such as the *Midwives Regulation*. The profession-specific regulations define key terms and set out the scope of practice and restricted activities for the named profession.

Regulatory College. The level down is the regulatory college. BCCNM is the regulatory college that sets the standards, limits, and conditions for midwives.

Standards and Guidelines. A standard is an expected and achievable minimum level of acceptable performance against which actual performance can be compared.

The standards and guidelines guide set the levels of performance that midwives are required to achieve in their practice. Standards and related limits and conditions on midwifery activities protect the public by ensuring that midwifery care or services received by the public are safe, competent, and ethical.

Figure 1: Regulation overview



Relevant Legislation

HEALTH PROFESSIONS ACT

The *Health Professions Act* is the legislation that governs all regulated health professions in B.C. It is umbrella legislation that sets out the duties and objects of health regulatory colleges. The *Health Professions Act* imposes the following obligations on colleges and the members of regulated health professions:

Registrant Verification

The *Health Professions Act* requires BCCNM to keep a register of all its registrants, current and former, which may be accessed by the public. BCCNM maintains a nurse and midwife verification system on its website that allows the public to search for a registrant. The system provides a registrant's registration status, whether they are practising with limits and conditions, and whether they have historic suspensions or periods of registration subject to conditions and limits.

Duty to Report

Under the *Health Professions Act*, midwives are required to act when client health and safety is at risk due to the action/inaction of another care provider. Being a registrant of a regulated health profession means you are obligated to report when another health-care professional is delivering care that is not meeting standards, is unsafe, or is unprofessional.

Both the *Health Professions Act* and case law provide legal protection to those who report other health professionals—no legal action may be brought against a person for making a report in good faith as required under the *Health Professions Act*'s duty to report sections. The duty to report requirements also creates an exception to the midwife's usual duty of confidentiality.

The *Health Professions Act* sets out a midwife's duty to report another health professional, either from the same or of another health profession, as follows:

Duty to Report Another Registrant

If a midwife has reasonable and probable grounds to believe that the continued practice of another health professional might be a danger to the public, the midwife must report in writing to the health professional's college.

As well, if a midwife ends the employment of another health professional (or dissolves a partnership or association with them) based on reasonable and probable grounds that they might be a danger to the public, the midwife must report in writing to that health professional's college.

Duty to Report Sexual Misconduct

If a midwife has reasonable and probable grounds to believe that another health professional has engaged in sexual misconduct, they must report in writing to that health professional's college.

Before making the report, the midwife must obtain the consent of the client or client's guardian (if the client is not competent to consent). If consent is not given, a report is still required by law but the client's name and identifying data are not included in the report.

Duty to Disclose Client Health Information

There are situations where a midwife is required under the *Health Professions Act* to disclose a person's health information (e.g., a client has a contagious illness and has been admitted to a hospital). A midwife does not require a client's consent to disclose this to the hospital because the disclosure is necessary to reduce the risk of the illness spreading to other clients and hospital staff.

B.C.'s *Personal Information Protection Act* permits disclosure of personal health information under other acts or circumstances, including the following:

- *Health Care (Consent) and Care Facility (Admission) Act* for the purposes of determining, assessing, or confirming capacity.
- Disclosure to an investigator or inspector who is authorized by a warrant or by any provincial or federal law, to comply with the warrant or facilitating the investigation or inspection.
- Under the *Public Health Act* for mandatory reporting for certain communicable diseases.

Other Duty to report requirements

Duty to Warn

Under case law, a midwife who has reasonable grounds to believe that another person may cause severe bodily harm must warn the appropriate people of the risk. This duty applies even if the person who may cause the harm is the client of the midwife.

Duty to Disclose

Under BCCNM bylaws, a registrant or someone applying for registration or reinstatement, must notify BCCNM in writing:

- If they are charged with a federal or provincial offence or an equivalent offence in a foreign jurisdiction.
- If they become the subject of an investigation, inquiry, review, or other proceeding in B.C., another province, or a foreign jurisdiction that could result in the person's registration being cancelled, revoked, suspended, limited, restricted, or made subject to limits or conditions.
- Of all information on an application that relates to the applicant/registrant and their practice of midwifery or is otherwise relevant to the safe and ethical practice of midwifery.

Duty to Report a Child in Need of Protection

Midwives have a duty under B.C.'s *Child, Family, and Community Services Act* to report a child in need of protection and to be aware of when this would be required. A child is defined as a person under 19 years of age and includes, but is not limited to, newborns and other children of the client.

For more information, please refer to BCCNM Policy on Reporting a Child in Need of Protection.

Interprofessional Collaboration

The *Health Professions Act* requires BCCNM to promote interprofessional collaboration. BCCNM models this collaboration by working with other health regulatory colleges. It is in the best interest of clients that their health-care practitioners work together. Collaboration helps ensure that care and treatment are coordinated as effectively as possible and reduces the risk of clients receiving conflicting or inconsistent treatment and advice. Where interprofessional collaboration involves working in a multidisciplinary setting, effective communication between all health-care providers is essential. It must be clear who has primary responsibility for the client and the newborn and the roles and responsibilities of each practitioner. These decisions and agreements must be clearly communicated and documented.

The client controls the extent of interprofessional collaboration. If a client is uncomfortable, they can direct their midwife not to share their personal health information with others. The midwife must follow such a direction unless one of the exceptions in the *Personal Information Protection Act* applies. However, where the limitation on sharing of client information would prevent effective collaboration, the client should be told that the proposed collaboration might not occur. If a client is asking a midwife to provide care outside a midwife's scope of practice, the midwife should refer to BCCNM's Policy on Requests for Care Outside Standards.

Midwives discuss any planned interprofessional collaboration with the client when possible and as early as possible. However, there are circumstances when this may not be possible (e.g., when the client goes to the hospital in an emergency). In an emergency, midwives can disclose information needed for the care of the client without consent, as long as the client has not previously prohibited the midwife from doing so.

MIDWIVES REGULATION

- Designates BCCNM responsible for carrying out the objects of the *Health Professions Act* in respect to midwifery
- Sets the reserved title "midwife"
- Outlines the restricted activities that midwives may perform

Reserved Title

Statutes regulate the use of titles. Each profession has specific titles that only persons registered with their college can use as a professional title. The title "midwife" is reserved for exclusive use by those registered with BCCNM as midwives. It would be professional misconduct for a midwife to use misleading titles or designations. BCCNM can take legal action to stop illegal practitioners from using a reserved title or practising midwifery. See BCCNM bylaws Division 4 for details.

Scope of Practice

The midwifery scope of practice sets out the activities that a midwife is authorized to carry out for a client and their newborn during normal pregnancy, labour, delivery, and the postpartum period. It is important for midwives to know their scope of practice as set out in the *Midwives Regulation.*

Scope of practice statements are broad descriptions of a regulated profession's activities and describe in general what each profession does and how it does it. They are not exhaustive lists of every service the profession may provide. They also do not exclude other regulated professions from providing services that fall within a particular profession's scope of practice if these activities are also within another profession's scope of practice.

BCCNM's Midwifery Scope and Model of Practice provides the broad boundaries of midwifery practice in B.C.. BCCNM's standards & guidelines detail the minimum requirements for safe practice within the midwifery scope and model. The Entry-level Competencies for Registered Midwives provides details of the skills and knowledge expected of a midwife in B.C.

Restricted Activities

Restricted activities are a narrowly defined list of invasive, high-risk activities that can only be performed by authorized persons, because of the risks associated with these activities and the need to ensure that practitioners possess the necessary competencies. Restricted activities can be performed by:

- Registrants of a health profession college who have been granted specific authority to do so in their regulations, based on their education and competence.
- Non-registrants who have been delegated the authority to perform the restricted activity, or who have been authorized to perform the restricted activity, by a regulated professional that has been granted the restricted activity (e.g., unregulated care provider).

PERSONAL INFORMATION PROTECTION ACT

Midwives have a legal and professional duty to protect the privacy of clients' personal health information. Personal information means information that can identify someone (e.g., name, home address, home phone number, medical information). Personal information does not include business contact information or work product information.

B.C.'s *Personal Information Protection Act* (PIPA) sets out the rules for how midwives collect, use, and disclose a person's personal information. PIPA requires a midwifery practice to have personal information protection policies in place and to assign a person(s) to be the office's privacy officer(s), responsible for helping clients understand how personal information is being managed and how to access their own personal information, and ensuring the practice complies with PIPA. Learn more at A Guide to B.C.'s Personal Information Protection Act.

Under B.C.'s PIPA requirements, when a client provides information regarding their health and the reasons for their visit, it is considered that the client has given the midwife implicit consent to the collection, use, and disclosure of that information for use in providing health care, including implicit consent to send all or part of the client information to a third party (lab, hospital, other physician, etc.) so long as it is in relation to the provision of direct midwifery care.

The BCCNM Policy on Medical Records also states that midwives may, for the purpose of providing or assisting in the provision of health care to a client, permit a health-care provider within the client's circle of care to examine the client's medical record and may share with them information contained in the record. Client consent in this scenario is considered implicit.

Clients should be informed of the practice when they first enter care. If they have any concerns about this, these concerns should be discussed, and a suitable solution arrived at.

BC HUMAN RIGHTS CODE

Every person in B.C. is entitled to access and receive health-care services in a manner that respects their human rights. The BC Human Rights Code protects British Columbians by forbidding discrimination based on certain personal characteristics in areas of daily life.

Duty to Not Discriminate

Discrimination refers to poor treatment based on a personal characteristic. To avoid misunderstandings that could lead to a human rights complaint, midwives should clearly communicate their reasons for proposed care plans, referrals, and other decisions.

Clinical decisions to accept or refuse to continue seeing a client for reasons not based on discriminatory grounds is not discrimination. For example, if a midwife is not competent to care for a client with a particular condition (e.g., a client who has a heart condition that the midwife does not fully understand) or if the care required is not within the midwife's scope of practice (e.g., prescribing hormonal contraception for a former client at six months postpartum), it is not discriminatory for the midwife to not accept or provide care for a client.

Duty to Accommodate

Midwives have a duty to accommodate a person unless the accommodation would result in undue hardship (e.g., risk to health or safety or because of undue cost).

Examples of accommodation may include the following:

- Permitting a client who uses a wheelchair to reschedule an appointment with less than 24 hours' notice if the elevator in the midwife's office building is temporarily out of service.
- Offering an extended appointment time to a client with an intellectual, learning, or mental health disability who may need more time to understand their options.
- Permitting a person with a disability to enter the premises with a support person, service animal, or assistive device.

Accommodation must be individualized; not all persons with the same disability will require or request the same accommodation. Individual accommodations should be discussed with the person where possible and provided in a manner that respects the person's dignity and autonomy. A midwife does not have to provide the exact accommodation that a person requests if another form of accommodation is reasonable and acceptable.

BC College of Nurses and Midwives

BCCNM's mandate under the *Health Professions Act* is to serve and protect the public, and to exercise its power and discharge its responsibilities under all enactments in the public interest.

BCCNM's regulatory functions include:

- Establishing the conditions or requirements for an applicant's registration with BCCNM.
- Recognizing education programs and courses in British Columbia for each of the five professions the college regulates.
- Establishing, monitoring, and enforcing standards of practice and professional ethics for nurses and midwives.
- Establishing and employing registration, inquiry, discipline, and monitoring procedures that are transparent, objective, impartial, and fair.
- Promoting and enhancing collaborative relations with other organizations in the health sector.
- Promoting interprofessional collaborative practice between nurses, midwives, and other health professionals.

BCCNM registrants contribute to the regulation of the four professions by serving on college committees, providing input into standards development, and joining in other BCCNM activities. More about the college is available on the BCCNM website.

BCCNM BOARD OF DIRECTORS

The board is the college's governing body and receives its authority from the *Health Professions Act*. The board ensures that the college has the resources, leadership, and strategy to meet the duties and objects specified in the Act. Meetings of the BCCNM board are open to the public. Visit the BCCNM website to learn more about BCCNM's governance.

BCCNM BYLAWS

The *Health Professions Act* authorizes BCCNM to develop bylaws to regulate the profession. BCCNM bylaws outline the structure of its board and committees, administration, college records, registration, quality assurance and professional responsibilities, and inquiry and disciplinary processes.

Bylaws are enacted by the BCCNM board, subject to oversight by the Minister of Health. Most bylaw changes are subject to a minimum three-month public notice period. All bylaw changes must be filed with the Minister to be effective and come into force 60 days after the date of filing. A BCCNM registrant is expected to be familiar with BCCNM bylaws.

ROLE OF BCCNM

Under the *Health Professions Act* and the BCCNM bylaws, BCCNM has various programs and processes to carry out the regulation of the midwife profession.

Registration

To enter the profession and become a midwife in B.C., you must register with BCCNM. BCCNM Registration Services assesses applications for registration or reinstatement. They assess character, fitness to practice, education, and competence. Prior to working, a midwife must be registered with the regulatory college of the province/territory in which they wish to practice. To practise without being registered with the college is illegal and a serious public safety concern.

See BCCNM's Applications and Registration webpage for detailed information on registration.

As part of your application, you must complete a criminal record check. You must disclose any:

- And all past charges or convictions, despite a pardon being issued
- Regulatory history you may have (e.g., investigations and disciplinary action)
- Physical or mental health conditions that may affect your ability to practice

Once a midwife is registered with BCCNM, they must continue to meet certain general terms, conditions, and limits as set out in the bylaws.

Quality Assurance

Under the *Health Professions Act*, BCCNM is required to set up, monitor, and enforce standards to enhance quality of practice and reduce incompetent, impaired, or unethical practice. BCCNM's Quality Assurance (QA) program is designed to assure and improve the quality of clinical and professional midwifery practice. Its underpinning philosophy is that midwives are accountable and responsible for sustaining and enhancing their own knowledge, skills, judgment, and competencies over a lifetime of practice. Review BCCNM website to understand annual QA requirements.

Participation in the QA program is a mandatory annual cycle for all practicing registrants. Not participating in QA can impact your ability to renew your registration. Details of the program can be found in the BCCNM Quality Assurance Program Framework.

Inquiry, Discipline, and Monitoring

As part of BCCNM responsibility to regulate the nursing and midwifery professions in the public interest, BCCNM aims to ensure:

- The public is protected from incompetent, unethical, or impaired nursing or midwifery practice.
- Nurses and midwives do not practice unless they can do so safely.
- Investigating complaints or reports about a midwife's professional conduct or competence.

Where a concern appears serious, appropriate action must be taken by BCCNM following the *Health Professions Act* and the BCCNM bylaws. BCCNM's website details the steps involved if a complaint is lodged against a midwife under the Professional Conduct Review Process page.

Practice and Regulatory Learning

BCCNM offers a variety of learning resources to help midwives understand and apply the standards, guidelines, and policies in their practice. As well, Regulatory Practice Consultation supports registrants and others to identify, understand, and apply BCCNM standards and other regulatory considerations to midwifery situations.

Policy and Research

The *Midwives Regulation* gives broad authorization to midwives to perform midwifery activities (scope of practice). BCCNM further defines the midwifery scope of practice by setting standards, limits, and conditions on these activities. Standards and guidelines are written and researched by BCCNM's Policy and Research teams and revised through collaboration with relevant partners. Midwives can get involved by reviewing standards and providing feedback.

Education Program Review

BCCNM recognizes nursing and midwifery education programs/courses under the authority of the *Health Professions Act*. Decisions about program recognition are made by BCCNM's board following a review and recommendation by the Education Program Review Committee or Deputy Registrar. Graduates of BCCNM-recognized programs are eligible to apply for registration with BCCNM. Review the Education Program Review Policies.

Standards and Guidelines

Standards and guidelines reflect what the public can expect midwives to know and be able to do to deliver culturally safe, compassionate, person-centred midwifery care.

Midwifery standards and guidelines specify the knowledge, skills, and judgment that midwives demonstrate when caring for pregnant, birthing, and postpartum clients, newborn infants, partners, and families across care settings. They provide a benchmark for practicing midwives as well as for those who plan to return to practice after a period of absence. BCCNM holds midwives to the standards and guidelines to ensure safe and consistent practice and conduct within the midwifery scope and model in B.C. All midwifery standards and guidelines are available on the BCCNM website.

ETHICS AND PROFESSIONALISM

BCCNM Midwives' Code of Ethics outlines the core values of midwifery, explains the midwife's ethical responsibilities, and guides their professional practice and conduct. Midwives are bound to this code as part of a regulatory process.

Billing and Fees

B.C. midwives are self-employed, independent health-care providers; they are generally not employees. The B.C. government funds midwifery on a fee-for-service model through the Medical Services Plan (MSP). Midwifery services are covered by B.C.'s Medical Services Plan (MSP).

The Midwives Association of BC (MABC) represents midwives in negotiating fees with the Ministry of Health. To learn more about the midwifery payment model, see B.C. Midwifery Payment Schedule and the Midwifery Master Agreement.

Midwives should be aware that clients who are not enrolled in the Medical Services Plan may have to pay for health-care services that are not funded or covered by the government, including midwifery services, lab tests, consultations by physicians, and hospital care. As well, there may be services or products that midwives offer to their clients that are not covered by government funding. For example, a midwife might sell certain home birth supplies at their clinic (e.g., a birthing tub) or offer group prenatal classes. In those instances, the midwife must ensure the fees charged are reasonable.

Marketing and Advertising

Midwives take steps to ensure that their advertisements meet the BCCNM bylaws. Advertising of midwifery services is factual, accurate, objectively verifiable, comprehensible, and professionally appropriate. Information such as office hours and days of operation, telephone or fax numbers, languages spoken, website address, and location are acceptable inclusions in advertising.

Engaging in false or misleading marketing and advertising can constitute a breach of BCCNM bylaws.

Conduct toward the College

The privilege of self-regulation comes with obligations. One such obligation is that midwives accept BCCNM's regulatory authority and conduct themselves professionally when interacting with the college. Examples of professional conduct toward BCCNM include:

- Staying up to date with changes to standards, guidelines, and policies
- Maintaining current (practicing/non-practicing) registration
- Upholding the integrity of BCCNM's role or actions
- Cooperating with a BCCNM investigation
- Participating in BCCNM's Quality Assurance program
- Complying with an order or direction of a BCCNM committee
- Responding appropriately and promptly to BCCNM correspondence
- Filing a mandatory report

Representation

A midwife acts professionally when representing the profession (i.e., interacting and communicating with clients, colleagues, third-party payers, or BCCNM). Misrepresentation can occur by using a misleading title or designation or providing inaccurate information about the midwife's training, qualifications, or experience.

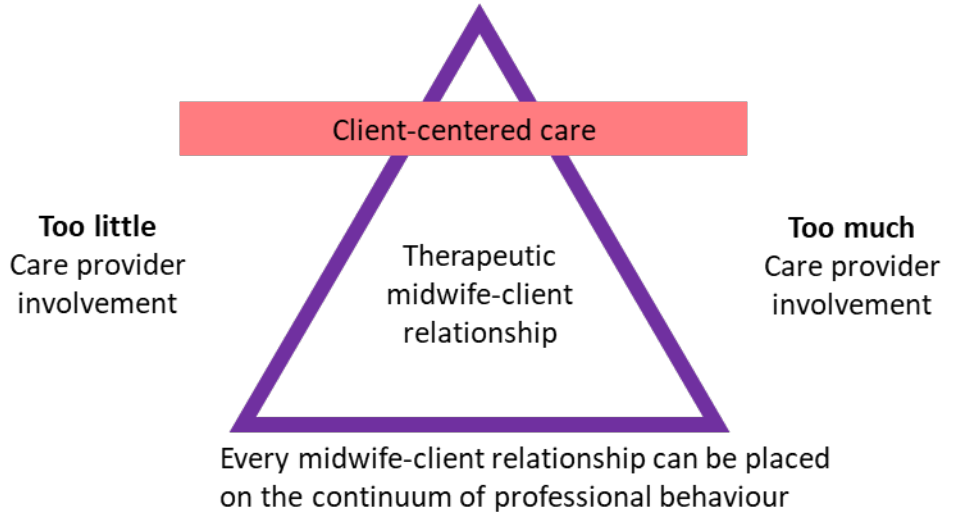
BOUNDARIES

Professional boundaries are the borders or limits that a midwife sets to maintain professional and ethical relationships with clients. BCCNM's Code of Ethics and the Policy on Appropriate Client-Midwife Relationships outline the responsibilities of a midwife to guide their professional practice and conduct in all situations.

There is a delicate balance between maintaining a professional distance and being engaged with the client. Being too distant or too close can compromise the client's care. The midwife, not the client, is responsible for establishing and maintaining boundaries. They use professional judgment to decide the appropriate boundaries of a midwife–client relationship.

Appropriate professional boundaries create a zone that allows for a safe, effective relationship between the midwife and the client. Boundaries sit on a continuum that ranges from under-involvement to over-involvement (Figure 2). A professional midwife–client relationship is in the middle. Client harm can occur at either end of the continuum.

Figure 2: Professional boundaries



Modified from NCSBN A Nurses Guide to Professional Boundaries, pg. 5.

To understand the nature of professional boundaries and the harm that can result from violating boundaries, it is useful to consider the applicable core concepts.

Core Concepts

Trust

The professional relationship between a midwife and a client is based on trust. The client must feel physically, emotionally, and psychologically safe with the midwife for the midwife to provide the best possible care. A fear that a midwife may disclose the client's personal health information may stop the client from providing information needed by the midwife. Similarly, a concern that the midwife is judging the client may result in the client answering questions incompletely or inaccurately.

Power

The midwife–client relationship involves a power imbalance in favour of the midwife. The client comes to the midwife in a position of need, is dependent on the midwife's education, expertise, and judgment, and is required to share sensitive personal information about themselves. In contrast, the midwife is not expected to, and should not, share sensitive personal information about themselves to the client.

The pregnancy, birth, and postpartum period can be emotional periods for the client, and vulnerable personal experiences can increase the power imbalance. This may be further increased if the client is in discomfort or pain or does not speak the same language. Clients that feel most vulnerable are at risk of significant harm from any boundary crossing.

Choice

A fundamental concept of both our legal and health-care systems is that clients should have control over their bodies and their health-care. This helps balance the power in the midwife–client relationship. To have authority and control of their body and their health-care, the client must receive informed choice for all health-care decisions.

Consent

A clients' autonomy and ability to give full, free, and informed consent is maintained at all times. Informed consent is defined as the process by which a client is provided with information about a clinical procedure and understands the purpose, benefits, potential risks, and alternatives, and voluntarily agrees to the procedure.

Maintaining Professional Boundaries

The following are examples of areas where midwives need to be careful to maintain professional boundaries.

Disclosure to Client

Disclosure of personal information often suggests the professional relationship is serving a personal need for the midwife rather than serving the client's best interests. Disclosure can result in the midwife becoming dependent on the client to serve the midwife's own emotional or relationship needs, which is damaging to the midwife–client relationship.

Giving or Receiving of Gifts

Gifts should never be solicited from clients. It may be acceptable on some occasions to accept a modest gift from clients; however, if a gift is refused, midwives should explain why in a sensitive manner. Midwives must be sensitive to the client's culture where refusing a gift as refusal could be seen as an insult. When deciding whether to accept a gift, midwives consider:

- Whether the gift will change the nature of the relationship
- The context in which the gift is offered, including the monetary value and appropriateness of the gift
- The client's intent in offering the gift
- Whether the client will expect a different level or nature of care

Gift giving by a midwife will often confuse a client. Even small gifts of emotional value can confuse the client even though the financial value is small. While many clients would find a holiday card from a midwife to be a kind gesture, some clients might feel obliged to send one in return. So even here, thought should be given to the type of clients in one's practice (e.g., some new Canadians might be unfamiliar with the tradition).

Dual Relationships

Dual relationships in the health-care context are relationships in which the midwife has more than one relationship with the client (i.e., both a professional and a personal relationship). The midwife considers the potential conflicts and risks before providing care to a person with whom they have a dual relationship.

Given professional boundaries, midwives are restricted from providing midwifery care to a related person, defined as family and/or household members, except in emergency situations. Midwives should avoid, as

much as possible, any professional relationships with clients where the midwives' objectivity or competence could reasonably be expected to be impaired because of their present or previous familial, social, sexual, emotional, financial, supervisory, political, administrative, or legal relationship with the client or with another relevant person associated with or related to the client. Likewise, relationships such as these could affect a client's willingness to give an accurate history or agree with the midwives' recommendations.

At times, it may be unavoidable that midwives provide midwifery care to family members, for example, in emergencies. In such instances, midwives should document:

- The circumstances
- Why the dualities or conflicts were unavoidable
- The informed consent of the client for all services

As soon as possible, responsibly for care should be transferred to another health-care provider.
Becoming a friend with a client is a dual relationship. Clients should not be placed in the position where they feel they must become a friend of the midwife to receive ongoing care. Midwives bear the sole responsibility to not allow a personal friendship to develop during care.

Established Customs

Established customs usually exist for a reason. For example, appointments are usually held during regular business hours at the midwife's clinic or proposed place of birth. Ignoring an established custom can confuse the nature of the professional relationship. (i.e., meeting a client after hours or at an unusual location). By ignoring a custom, a client might think that they are special, or different from other clients.

Personal Opinions

Everyone has opinions and midwives are no exception. However, midwives do not use their position to promote their personal opinions (e.g., religion, politics, or even lifestyle) on clients. When interacting with clients or the public, midwives:

- Use current evidence-based information.
- Identify the effect of their own values, beliefs, and experiences.
- Recognize potential conflicts and take action to meet client needs.

Alternate care arrangements must be made when a midwife chooses not to provide care because of a conscientious objection.

Touching and Disrobing

Care must be taken in any touching of clients; touching should never be a surprise to the client. Some clients have suffered physical or sexual abuse and any sudden or unexpected touching of the client could be startling and upsetting. The nature and purpose of any clinical touching is explained first, and the client gives consent before the touching begins. The client can withdraw consent at any time.

In addition, draping clients for examinations is important. Midwives discuss the client's privacy expectations during labour at a prenatal appointment to avoid misunderstandings.

Sexual Abuse/Misconduct

The midwife–client relationship is based on mutual trust and respect and any act of misconduct/abuse is a betrayal of that trust. BCCNM investigates and acts upon all complaints or reports received in writing of inappropriate sexual behaviour.

Midwives understand what kinds of conduct amount to sexual misconduct/abuse, the harm that can result from such behaviour, and the need to take reasonable measures to avoid even the perception of sexual misconduct (e.g., telling a sexual joke, hanging a calendar on the wall with sexually suggestive pictures (e.g., a "firefighters" calendar), making non-clinical comments about a client's physical appearance, unnecessary or inappropriate comments about a client's sexual orientation, gender identity, or gender expression). It is the responsibility of the midwife to prevent sexual misconduct from occurring. See BCCNM's Policy on Appropriate Client-Midwife Relationships.

Tips for Preventing Sexual Misconduct

Do not engage in any form of sexual behaviour or comments around a client, including comments about the client's romantic life.

- Do not display sexually suggestive or offensive pictures or materials. Monitor the advertising posters, calendars, and magazines used in the clinic.
- Intervene when others, such as colleagues and other clients, initiate sexual behaviour or comments.
- Avoid comments about a client's appearance, clothing, or body unless clinically necessary.
- If a client initiates sexual behaviour, respectfully but firmly discourage it.
- Use the informed choice principle and obtain informed consent before touching a client.
- Do not date clients.
- Ensure that informed consent is an ongoing process, rather than a single discussion.
- Unless there is a valid reason, avoid meetings outside of the clinic or proposed place of birth. Ensure any incidents or misunderstandings are fully and immediately documented.
- Avoid self-disclosure.
- Avoid hugging and kissing clients.
- Be aware and mindful of cultural, religious, age, gender, and other areas of differences. If in doubt, ask if one's proposed action is acceptable to the client.
- Do not touch a client except when clinically necessary or appropriate and acceptable to client. If clinically necessary, first explain the nature of the touching and the reason for the touching and be clinical in one's approach.
- Be sensitive when offering physical assistance to clients who may not be mobile. Ask both whether and how best to help them before doing so.
- Monitor your behaviour for warning signs.

SOCIAL MEDIA

BCCNM receives complaints about registrants' use of social media and technology. The issue is not social media or technology itself, but how it's used—personally and professionally, when working and when not working.

When using social media, professionally or personally, midwives follow the BCCNM Guideline for Participating in Social Media and consider:

Benefits and risks. Know the benefits and risks of social media. Know the technology and have the skills and judgment to use it appropriately and ethically. Be aware of social media's evolving culture and changing technology. Reflect on the intent and consequences of online behaviour— before blogging, posting, liking, commenting, or tweeting.

Professional image. Use the same level of professionalism in online interactions as in face-to-face interactions. Keep personal and professional lives separate.

Confidentiality. Do not share any client information on social media sites. Leaving out details when posting information or images does not protect client confidentiality. Report confidentiality breaches to the right person at once.

Privacy. Set and maintain privacy settings to limit access to personal information. Be aware of privacy settings and know that, even with the highest privacy settings, others can copy and share information without your knowledge or permission.

Boundaries. Set and maintain appropriate professional boundaries online, just as with face-to-face relationships. Communicate these boundaries to clients and end professional relationships appropriately. Don't accept "friend" requests from clients or former clients on personal social media accounts.

If social media is used with clients for work purposes, such as client teaching and resource-sharing, use a professional account separate from a personal one. Be clear about how using social media supports professional practice and make sure policies to address privacy and confidentiality are in place.

Expectations. Use caution when identifying as a midwife online, outside of a work situation—others may ask for advice, which could lead to a midwife–client relationship. Using a name that hides your real identity does not release you from this expectation. Know this and practise accordingly.

Integrity. Protect your and the profession's integrity. Use proper communication channels to discuss, report, and resolve workplace issues— not social media. Refer to colleagues or clients online with the same level of respect as offered in the workplace. Before blogging, tweeting, or sharing information, reflect on your intentions and the possible consequences. Consider the impact of "liking" someone else's comments.

Accountability. Reflect on why, how, and when to use social media and help others do the same. Know that personal use of social media while working can create client risks through distraction and interruptions, and in some situations, could be viewed as client abandonment. Use professional judgment to keep obligations to clients, colleagues, and employers front and centre.

INFORMED CHOICE AND CONSENT

Informed choice is a fundamental principle in midwifery care. Informed choice includes and goes beyond the traditional legal concept of informed consent. It is the responsibility of the midwife to encourage and facilitate the ongoing exchange and understanding of current, balanced, and relevant information in a non-authoritarian, culturally sensitive, and cooperative manner. Where appropriate, midwives also have a duty to recommend care they determine is in the best interest of their client; the client may accept or decline their recommendation. The informed choice process results in either informed consent or informed refusal. Informed choice discussions are documented in the medical record and results communicated with the health-care team.

Effective communication begins with listening to others and understanding the person's wishes, expectations, and values before providing care. Asking questions to clarify and expand on what someone is saying also helps to understand their expectations. Summarizing what the client has said can help ensure understanding and reassures the client the midwife has been listening.

Effective communication also involves making sure the client understands what the midwife is going to do, why they are going to do it, what is going to happen, and any possible risks. When the client is confused by what the midwife is doing or why they are doing it, there is miscommunication.

Review BCCNM's Policy on Informed Choice.

Ways of Receiving Consent

There are three ways a midwife can receive consent. Each has its advantages and disadvantages.

Written Consent

A client can give consent by signing a written document agreeing to the choices. A written consent provides some evidence the client gave consent. One disadvantage of written consent is that midwives may confuse a signature with consent. A client who signs a form without understanding the nature, risks, and side-effects of the choice has not given consent. The use of written consent documents can discourage clients from asking questions. In addition, the midwife might then not check with the client to make sure the client understands the information to which they are consenting.

Verbal Consent

A client can give consent by a verbal statement. Verbal consent is the best way for the midwife and the client to discuss the information and ensure the client really understands it. Documenting the discussion in the client record is required.

Implied Consent

A client can give consent by their actions (i.e., nodding the head). The main disadvantage of implied consent is the midwife has no opportunity to check with the client and make sure the client understands what is going to happen.

When a client provides information regarding their health and the reasons for their visit, the client is considered to have given the midwife implicit consent to the collection, use, and disclosure of that information for use in providing health care. This includes implicit consent to send all or part of the client information to a third party (lab, hospital, other physician, etc.) involved in the provision of direct midwifery care. This should be explained to the client at their initial visit. If concerns arise, further discussion should take place and a solution to their concerns found.

Consent Where the Client is Incapable

A midwife can assume a client is capable unless there is evidence to the contrary (i.e., the midwife may not be explaining in a way the client understands). If the client does not appear to be capable of consenting, the midwife should assess their capacity.

The *Health Care (Consent) and Care Facility (Admission) Act* sets out rules about consent to care, especially where there is concern about the capacity of the client to consent to the care. Informed choice for any assessment or treatment is obtained from the client; however, if the client is incapable, informed choice is obtained from the client's substitute decision-maker. There are specific exceptions made for emergencies. Midwives should familiarize themselves with this Act.

CONFLICT OF INTEREST

Midwives have a duty to act in the best interests of their clients and do not allow personal or other interests to interfere. Where a personal interest would reasonably affect the midwife's professional judgment, a conflict of interest exists. To determine whether a situation amounts to a conflict of interest, a midwife needs to determine what a reasonable person would conclude from the circumstances. A conflict of interest can be actual, potential, or perceived, and direct or indirect.

For example, if a midwife refers a client to a baby store owned by their spouse to buy products, a reasonable person will question whether the midwife recommended that product because the client needed it or to help their spouse.

Some common examples of conflicts of interest are as follows:

- Receiving benefits from suppliers or persons receiving referrals from the midwife
- Giving gifts or other inducements to clients who use the midwife's services where the service is paid for by a third party (e.g., like the government)
- Using or referring a client to a business in which the midwife has a financial interest
- Selling a drug to a client for a profit

Midwives may be asked to provide BCCNM with any documents, explanations, or information regarding an alleged conflict of interest to enable BCCNM to assess whether a conflict of interest is a concern.

PRIVACY AND CONFIDENTIALITY

Midwives put in place practices to protect the personal health information they collect and keep all client information confidential. Midwives and their organizations act appropriately to protect personal health information from unauthorized access, disclosure, use or tampering. Those safeguards include:

- Physical measures (e.g., restricted access areas, locked filing cabinets)
- Organizational measures (e.g., need-to-know and other employee policies, staff training)
- Technological measures (e.g., passwords, encryption, virus protection, firewalls)

Midwives or organizations need to systematically review all the places where personal health information (including laptops, smartphones, and other handheld devices) is stored and assess the adequacy of the safeguards.

Practitioners or organizations also need to securely retain, transfer, and dispose of records in accordance with BCCNM requirements.

BCCNM's Policy on Medical Records outlines that what is required regarding retention, transfer, and disposal of medical records. It also covers information on maintaining or transferring records upon leaving a practice or retiring.

Transmitting Client Information (Electronic Communication)

Midwives have the professional and ethical responsibility to ensure that both they and their staff exercise care in the collection, use, and disclosure of clients' personal information, regardless of format. Midwives are responsible for ensuring that their practice follows provincial and federal privacy laws and adheres to BCCNM's Guideline for Using Electronic Communication to Transmit Client Information. All means of electronic communication and information can be retrieved and used in a court of law. A midwife is under no obligation to use electronic communication with a client.

Medical records must include documentation of all emails, faxes, text messages, instant messages, phone calls, and any other encounters related to client care.

Important Contacts and Partners

MIDWIVES ASSOCIATION OF BC

Midwives Association of BC (MABC) is the association protecting the interests of the midwives in B.C. MABC is responsible for negotiating the funding contract for midwifery services. MABC can also provide midwives with information on how to bill the Medical Services Plan for midwifery care.

MIDWIVES PROTECTION PROGRAM

The Midwives Protection Program (MPP) is administered and delivered by the Risk Management Branch (RMB) of the Ministry of Finance in conjunction with the Ministry of Health and MABC. MPP covers the professional practice liability concerns of registered midwives who are members of MABC and who are registered with BCCNM.

BILLING TO MEDICAL SERVICES PLAN

Midwifery services are covered under the BC Medical Services Plan (MSP). All new midwives enrolling with MSP will be required to sign a form as part of their registration process. Visit the MSP website for more information.

PERINATAL SERVICES BC

Perinatal Services BC (PSBC) is an agency of the Provincial Health Services Authority that produces and shares evidence-based information, education, and resources about perinatal health with health professionals across the province. All midwives in B.C. are required to use PSBC data collection and documentation tools in their practice. These tools and instructions on their use can be reviewed at www.perinatalservicesbc.ca/health-professionals/forms.

HOSPITAL PRIVILEGES

Midwives should look for and review information about hospital privileging, hospital bylaws, rules and regulations within each hospital, and the range of privileging processes in different hospitals/health authorities that midwives can encounter around B.C., including back-up plans and protocols that must be in place with hospitals for transport from a home birth.

HOSPITAL ACT AND HOSPITAL ORIENTATION

The *Hospital Act* governs hospital care in B.C. Along with BCCNM standards and guidelines, midwives adhere to the *Hospital Act* and the policies and procedures of the hospital where they have privileges. Hospitals are responsible for orienting midwives to hospital operations, protocols, policies, and procedures.

VITAL STATISTICS ACT

A midwife who attends at a birth must complete the notice of birth under the *Vital Statistics Act*. It is the midwife's responsibility to register births with the B.C. Vital Statistics Agency. Information on registering births can be found on the Vital Statistics Agency website.

B.C. CORONERS SERVICE

The B.C. Coroners Service is responsible for the investigation of all unnatural, sudden, and unexpected, unexplained, or unattended deaths. The coroner is responsible for ascertaining the facts surrounding a death, determining the identity of the deceased, and how, when, where, and by what means the person died. More information can be found on their website.

ORIENTATION TO MIDWIFERY PRACTICE IN B.C

BCCNM recommends that any individual interested in practising midwifery in B.C. set aside some time with a midwife to discuss the realities of practice, which can vary between communities. These include:

- Typical practice organization and call schedules
- Accessing labs and diagnostic testing, orientation to filling out lab requisitions
- Local hospital bylaws and privileging processes, hospital protocols, and procedures
- Clinical community standards, particularly those that vary from BCCNM's
- How to obtain formal orientation to the hospital
- Organization of local midwifery medical staff in hospital
- Level of ambulance service available locally and the usual transport times
- Expectations when working with specialists
- Services available in the community and circumstances that require transferring out
- Community resources, supports for clients with special needs, and relationship with public health

Effective date: April 1, 2023

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Pub. No. 895