

Issue Date: January 2020

Current Version: 2.0 - October 2023

Refers to the following key documents/Legislation

- Health Practitioners Competence Assurance Act 2003
- Privacy Act 2020
- Official Information Act 1982
- Defamation Act 1992
- The New Zealand Bill of Rights Act 1990

And refers to the following related information on the Midwifery Council website:

- Code of Conduct
- Competencies for Entry to the Register
- Statement on Cultural Competence for Midwives
- Decisions by the Health Practitioners Disciplinary Tribunal
- Recently suspended midwives

Policy Statement

Te Tatau o te Whare Kahu | Midwifery Council (the Council) exists to protect public safety. As the midwifery regulator it oversees professional standards in midwifery. The Council makes sure midwives meet and maintain professional standards of education, conduct and performance, so that midwives deliver high quality healthcare throughout their careers. The Council will hold midwives to account if their conduct falls short of these standards.

The naming policy was developed in accordance with section 157B of the Health Practitioners Competence Assurance Act 2003 (the HPCAA), which states that the purpose of the naming policy is to:

- enhance public confidence in midwives by providing transparency about the Council's disciplinary procedures and decision-making processes; and
- ensure that midwives whose conduct has not met expected standards may be named where it is in the public interest to do so; and
- improve the safety and quality of health care.

This naming policy will enhance public confidence in midwifery as a profession by allowing women to make an informed choice about the midwife they engage with.

1. Health practitioners for whom the naming policy applies

a. This naming policy applies to:

- I. Any midwife registered with the Council; or
- II. Any midwife who has previously held registration with the Council.

b. In New Zealand, midwives are registered health practitioners who practise within the Midwifery Scope of Practice, as prescribed by the Council under section 11 of the HPCAA.



2. Circumstances in which a midwife may be named

- a. The Council may publish in any publication the name of a midwife who is the subject of an order or direction made by the Council under the HPCAA¹.
- b. Publication of midwife's name shall only occur following the completion of any Council process, and not while any investigation, deliberations or appeals are ongoing.
- c. Notwithstanding section 2b above, the Council may decide to name a midwife who is the subject of an interim suspension order; or has interim change to or conditions imposed on his or her scope of practice, under sections 38, 39(1), 43, 48 or 69 of the HPCAA.
- d. The Council will not routinely publish the names and details where midwives were investigated but are not the subject of any orders or direction, except for:
 - I. Midwives who have been exonerated during any investigation, who may ask the Council to publish their name and the details of that exoneration in order to clear their name
 - II. Midwives who are the subject of confusion where their name is the same as or very similar to that of another midwife or health practitioner named in an order, who may ask the Council to publish their name with clarification to avoid confusion.
- e. This policy does not affect the existing requirement/s for the Council to share information about a practitioner under sections 35, 138 or 156A(2)(a) of the HPCAA.

3. General principles that will guide the Council's naming decisions

- a. In making a decision about the publication of information relating to a midwife, the Council will maintain a focus on protecting public safety.
- b. When deciding what information is published, the Council must weigh the public interest in making the information available against the consequences for the midwife of being named, including the likely harm to the midwife's reputation.

4. Criteria that the Council must apply when making a naming decision

When assessing whether to publish the name of a midwife in a notice issued under section 157(1) of the HPCAA the Council must consider the Privacy Act 2020, natural justice rights and any other relevant matters. The Council will apply the following criteria:

- a. **Public safety** - ensuring the safety and quality of health care and the competence of midwives. Non-disclosure in a particular case may run the risk of harm to women and their whānau in the future. Disclosure may elicit other complaints or concerns about a practitioner's competence.
- b. **Public choice** - The right of existing and potential women and their whānau to know the disciplinary history of a particular midwife so as to be able to make an informed choice whether to engage their services in the future
- c. **Accountability** - midwives are accustomed to being held to account for the standard of care or service they provide. Information may need to be disclosed if serious accountability or health and safety concerns are raised, including non-compliance with an existing order.

¹ An order or direction is made by the Midwifery Council. For example: Suspension, inclusion of conditions or change in permitted health services when a practitioner does not satisfy the requirements of a competence or recertification programme under section 43 (1) of the HPCAA.



- d. Nature of the concerns - does the concern raise serious safety or competence concerns, does non-disclosure raise a risk of harm to women and their whānau in the future? Concerns of a serious nature will raise stronger public interest considerations in favour of disclosure
- e. Whether the investigation is ongoing - disclosing the details of an allegation during an ongoing investigation may unfairly suggest that there is substance to the allegation
- f. Action taken in respect of the outcome of an investigation – the public interest in disclosure will be higher, and a midwife’s legitimate expectation of privacy will be reduced, where a concern has been investigated and found to be substantiated. It will often be in the public interest to know the remedial actions or consequences imposed on the midwife
- g. Extent to which information is already in the public domain - the privacy interest may be diminished by prior knowledge or public availability of the information. If information about the concern is already in the public domain, this may increase the public interest in disclosure of a summary about the outcome of any investigation. The purpose of such disclosure would be to demonstrate that appropriate action has been taken to investigate the concern and institute any protective measures or remedial action
- h. Likelihood of harm to the midwife arising from disclosure - there may be factors that heighten the risk of personal or professional harm arising from disclosure, for example the physical or mental health of the midwife, or the size of the community in which they practise.

5. Information the authority may disclose when naming a midwife

- a. Where the Council has elected to publish information about a midwife, it will release a summary of the information with appropriate context
- b. Publications instigated by the Council may include the name of the midwife, a short context of the concern and citation of the relevant section of the HPCAA
- c. Where the order relates to the health of a midwife, additional consideration is needed with regards to the impact any disclosure may have on the midwife.

6. Means by which a midwife may be named

- a. Publication will be made via posting on the relevant section of the Council website; and may also be by inclusion in the Council’s electronic newsletter or other suitable media
- b. In addition, the Council may also annotate the midwife’s entry on the Register to include a reference to the order or direction
- c. Information published on the Council’s website will be reviewed periodically at an interval of not more than two (2) years
- d. The Council may elect to share the information with other health regulators in New Zealand, or equivalent regulatory bodies overseas.



7. Procedures that Council must follow when making a naming decision

- a. Where the Council proposes to publish information about a midwife, having considered the factors in section four (4) of this policy, it will be required to make the midwife aware of this proposal and the proposed content twenty (20) business days in advance of the anticipated publication
- b. Sending the information in section 7a to the midwife's last known email address will be sufficient for this purpose
- c. The advance notice timing in section 7a above provides the midwife with the opportunity to:
 - I. Consider the content and make any submissions to the Council within ten (10) business days of receiving the notice; and
 - II. Make their employer or any practice partners aware of the publication.
- d. Where the midwife provides submissions to Council in accordance with section 7c of this policy, the Council must consider those submissions before making a final decision whether or not to make the publication and the content and scope of any publication
- e. Where a publication relates to a specific event or concern, irrespective of whether that clearly identifies a woman and her whānau the Council must also provide the intended publication content to that woman and her whanau in advance of publication:
 - I. The woman will be given an opportunity to consider the content and make a submission to the Council within ten (10) business days of receiving the notice.

Record of Amendments

Approved on: January 2020

Reviewed: October 2023

Next Review Date: July 2026