

Policy for notifications regarding a midwife's competence to practise

Refers to the following key legislation:

- Health Practitioners Competence Assurance Act 2003 (primarily sections 34 to 44)

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

- Competencies for entry to the Register of Midwives (Competency standards)
- Scope of practice of a midwife
- Midwifery Council Statement on Cultural Competence
- Midwifery Council Code of Conduct

This policy informs the following Midwifery Council internal procedure documents:

- Procedure for managing notifications regarding a midwife's competence to practise
- Procedure for undertaking an assessment of a midwife's competence to practise
- Procedure for management of a midwife when there is a notification of a risk of harm or serious harm
- Procedures for managing competence programmes

Document ID: MCNP	Version: 7.1
Facilitated by: Policy & Risk Advisor	Issue date: February 2019
Approved by: Midwifery Council	Review date: February 2021

1. Policy purpose and policy statement

1.1. Policy purpose

- a. The purpose of this policy document is to provide a formal framework for the management of competence processes, to outline to all midwives with a current New Zealand midwifery practising certificate the decision processes that are required when questions are raised regarding their competence to practise, and to ensure that the Midwifery Council (the Council) staff have the background, knowledge and ability to undertake the work required in managing these processes.

1.2. Policy statement

- a. The Council is only able to consider matters of competence for midwives who are entered on the New Zealand Register and who hold a current practising certificate. The Council has the discretion to review the practice of a midwife at any time whether there is cause for concern or a notice has been received (Health Practitioners Competence Assurance Act 2003 (HPCAA) section 36).
- b. In undertaking its work regarding assessment of fitness to practise, the Council must ensure that it meets its primary statutory purpose which is to protect the health and safety of the public.
- c. The Council will have a fair and robust process for assessment and management of midwives' fitness to practise/competence concerns. The process is underpinned by natural justice and fairness. The risk of harm to the public is minimised through the timely implementation of the policy and associated procedures.

2. Legislative requirements

The HPCAA requires the Council to satisfy itself that a midwife is competent to practise midwifery.

2.1. Part 3 sections 34 – 44 outline the processes that must be followed when there are concerns regarding an individual midwife's competence.

- a. Section 34 requires particular people to notify the Council if they have reason to believe a midwife may pose a risk of harm to the public by practising below the required standard of competence.

- b. Section 35 requires the Council to take specific actions if it has reason to believe a midwife may pose a risk of harm to the public.
- c. Section 36 sets out when the Council must make enquiries about, and may review, a midwife's competence.
- d. Section 37 sets out the matters the Council must observe in conducting a review;
- e. Section 38 sets out what the Council must do if a review reveals that a midwife has failed to meet the required standard of competence.
- f. Section 39 describes the process for suspension or inclusion of conditions pending a review or assessment of competence.
- g. Section 40 describes the purpose and process for development of competence programmes.
- h. Section 41 refers to recertification programmes.
- i. Section 42 requires midwives under review to make available their clinical records to those undertaking the review.
- j. Section 43 describes the process that the Council must undertake if the midwife fails to complete the required competence programme.
- k. Section 44 controls the use and dissemination of information obtained by a reviewer during undertaking a competence review.

2.2. Part 5 section 106 sets out the various processes relating to rights of appeal against decisions the Council makes under sections 38 and 39.

3. Definitions used by the Council

For the purposes of monitoring competence and deciding if a review is required, the Council uses the following set of key definitions in its decision making.

3.1. Definition of competence to practise

- a. In order to be issued with a practising certificate, registered midwives must provide evidence that they are practising within the Midwifery Scope of Practice and that they are maintaining their competence to practise.
- b. The Council defines 'maintaining competence to practise' for registered midwives as 'the ongoing capacity to integrate knowledge, skills, understanding, attitudes and values within the professional framework of the Midwifery Scope of Practice'.

3.2. Definition of required standard of competence

- a. The HPCAA defines “required standard of competence” as meaning the standard of competence reasonably to be expected of a midwife practising within the Midwifery Scope of Practice (HPCAA section 5).
- b. The Competencies for Entry to the Register of Midwives (Competency standards) in conjunction with the Council Statement on Cultural competence and the Midwives Code of Conduct are the entry-level criteria against which to measure competence.
- c. Midwives are required to be aware of, and comply with, the requirements of New Zealand Government legislation as it directs their practice.

3.3. Definition of risk of harm/risk of serious harm

- a. Risk of harm is defined by Council as being when a midwife’s practice is found or alleged to be so far below the reasonably accepted standard as to make the risk of harm to a mother or baby unacceptable.
- b. A risk of harm may be indicated by:
 - i) A pattern of practice over a period of time that suggests the midwife may not meet the required standard of competence;
 - ii) A one-off incident that demonstrates a significant departure from accepted standards
 - iii) Lack of engagement with Council’s processes;
 - iv) Recognised poor performance where local interventions have failed (which does not exclude notification of serious concern where internal review or audit is inaccessible or unavailable to the person with the concern);
 - v) Criminal offending;
 - vi) Professional isolation with apparent declining standards.
- c. A risk of serious harm may be indicated where:
 - i) An individual woman or her baby may be seriously harmed;
 - ii) The midwife may pose a continued threat to more than one woman and her baby and as such the harm is collectively considered serious;
 - iii) There is sufficient evidence to suggest that alleged criminal offending is of such a nature that the midwife poses a risk of serious harm to one or more members of the public.
- d. In determining the risk, the Council will consider the context and surrounding circumstances of the specific case and whether the alleged risk is fanciful or not.

3.4. Definition of Competence Review: Stage One

- a. A competence review where the midwife and a reviewing midwife discuss the midwifery decision making that relates to a specific clinical case.

3.5. Definition of Competence Review: Stage Two

- a. Where the midwife and two other midwives undertake an assessment of the reviewed midwife's competence to practise. This relates to their practice in general and is not focused on analysing decision making in one specific case.

4. Factors which influence the likelihood of a competence review being undertaken

The Council will take a number of factors into consideration when deciding if a competence review should be formally undertaken.

4.1. Failure to respond

- a. If a midwife fails to respond adequately to the notice advising them of the decision to review their competence, the Council is entitled to believe that the midwife fails to meet the required standard of competence (HPCAA section 38 (2)) and can act accordingly.

4.2. Factors which may increase the likelihood that a competence review would be appropriate

- a. Examples may include (without limitation):
 - i) A pattern of evidence of poor standards;
 - ii) A single incident that by its nature, raises a question of overall competence;
 - iii) Professional isolation;
 - iv) Unprofessional behaviour;
 - v) Inadequate participation in the Recertification Programme;
 - vi) The midwife has had a previous competence review or been the subject of previous notifications.

4.3. Factors which may decrease the likelihood that a competence review would be appropriate

- a. Examples may include (without limitation):
 - i) The midwife has had a previous competence review or been the subject of previous notifications. If the midwife can provide clear evidence of a change of practice as a result of an error, making a recurrence less likely;
 - ii) If the midwife acknowledges a deficiency or a health problem and either asks for assistance in addressing the matter or has already voluntarily taken steps to address the matter;

- iii) If the complaint happened a number of years earlier and there have been no subsequent complaints about the midwife's practice.

4.4. Appropriate referral of concern

- a. As a part of its initial investigation, the Council will consider whether it is more appropriate to handle the matter in an alternative manner. This could include management by the Council as a health/fitness to practice notification, or referral to the Professional Conduct Committee.

5. When a midwife's practice is found below the standard of competence

When a midwife has been advised that their practice has been reviewed and found to be below the standard of competence, restrictions are placed on the activities the midwife can undertake.

5.1. Prohibited activities

- a. Prohibited activities include:
 - i) Precepting midwifery students;
 - ii) Mentoring new graduate midwives;
 - iii) Mentoring, supervising or acting as a mentor/peer supervisor for any midwife;
 - iv) Acting as a member of a NZCOM Midwifery Standards Review panel or a resolutions committee member;
 - v) Working as a locum.
- b. The restrictions on the activities of the midwife will remain in place until specific requirements as set by the Council are met.