

Concerns about New Proposed Rules for Texas Midwives

Contributed by Beth Overton, CPM

Monday a letter to Texas Midwives and some proposed rules were posted on the Texas Midwifery Board's website. These proposed new rules are specifically for the regulation of students and preceptors in Texas. Please go to the Midwifery Board website at http://www.dshs.state.tx.us/midwife/mw_new.shtm to read the entire proposal. Personally, I don't have a problem with new rules being considered but I do have big problems with the exact wording these proposed rules. I'd like to share my observations and comments with everyone because if my observations are correct, it will be very important for the State of Texas to hear from a lot more people than just me. My comments are below. I've already mailed them to the Midwifery Board. I quoted anything I commented on but please refer to the proposal on the Midwifery Board website as needed. I would welcome some discussion on this topic. So please feel free to email me if want to discuss it. Also, please consider sending in comments from your own perspective, especially if you are a consumer. I know that the Midwifery Board always considers it especially valuable to hear from consumers. Comments will be accepted until April 12, 2010. The easiest way to submit comments is by email to midwifery@dshs.state.tx.us Please indicate "Comments on Proposed Rules" in the subject line.

My Comments 6. An apprentice/student is practicing midwifery without a license when s/he: a. Exceeds the level of practice set by his/her supervisor b. Advertises themselves as a midwife unless they advertise as an apprentice/student midwife with the approval of the supervising midwife. The advertisement must include the name of the supervising midwife. c. Accept a fee for midwifery services from a client. d. Have their own clients. The wording this point alternates in form between the singular and the plural. The introductory clause is cast in the singular, "An apprentice student...s/he". Sub-point 6.a. follows the singular form: "Exceeds...his/her..." Thereafter, the grammatical form is plural: 6.b. "themselves...they"; 6.c. "Accept"; 6.d. "their". Sub-point 6.d. needs clarification. I would propose the following change for this sub-point: 6. An apprentice/student is practicing midwifery without a license when s/he: d. Have their own clients. provides primary care for a client outside the parameters of her preceptor's supervision and written contract with the client. Explanation: I believe it is vital for all midwifery students to have the experience of acting as primary care providers for a few clients while they are under the appropriate supervision of their preceptors. This gives apprentices a much better opportunity to develop the skills necessary to think for themselves and figure out the individual needs of individual clients. Just as doctors work as interns, I believe that student midwives should be given the opportunity to work under supervision as a primary care provider for clients as a part of their training. Without this kind of experience we risk releasing new midwives to work on their own who lack the ability to think like a primary care provider because they were not allowed to do so during their training. NARM recognizes the value of this kind of experience. That is why they require it as a part of the PEP process. One of the requirements for the PEP process is "A minimum of three (3) births with women for whom you have provided primary care during at least four (4) prenatal visits, birth, newborn exam, and one (1) postpartum exam." Please reword 6. d. so that it does not prohibit students from using the PEP process and so that it does not hinder all students from having experience working as primary care providers while still under supervision. 10. If a complaint is filed against a supervising midwife with the Texas Midwifery Board or any other professional, licensing, or certification board or agency related to midwifery, the supervising midwife shall immediately inform each of his/her apprentices/students in any course in which the students are enrolled in writing of the following information: a. the nature of the complaint filed against him/her; b. the name, address and phone number of the Texas Midwifery Board or the other professional, licensing, or certification board or agency; and c. the nature of any action proposed and/or taken against him/her as a result of the complaint. I have problems with #10 as it is written. Therefore, I would like to propose the following revisions which I have also divided into two points instead of one: 10. If a complaint is filed against a supervising midwife with the Texas Midwifery Board or any other professional, licensing, or certification board or agency related to midwifery, and if the complaint originated from patient care in which a student was directly involved, the supervising midwife shall immediately inform in writing each of his/her apprentices/students in any course in which the students are enrolled who participated in the care, providing the following information: a. the nature of the complaint filed against him/her; b. the name, address and phone number of the Texas Midwifery Board or the other professional, licensing, or certification board or agency; and c. the nature of any action proposed and/or taken against him/her as a result of the complaint. 10.11. If a complaint is filed against a supervising midwife which results in a disciplinary action by the Texas Midwifery Board or any other professional, licensing, or certification board or agency related to midwifery, the supervising midwife shall immediately inform in writing each of his/her apprentices/students in any course in which the students are enrolled, providing the following information:

a. the nature of the complaint filed against him/her violation in which s/he was found guilty; b. the name, address and phone number of the Texas Midwifery Board or the other professional, licensing, or certification board or agency; and c. the nature of any action proposed and/or taken against him/her as a result of the complaint violation. Explanation: I removed the words "in any course in which the students are enrolled" because this statement is completely unnecessary. It does not clarify anything that is not already presumed without the statement included and including it could cause some confusion because not all students will be enrolled in a course. The current wording of this rule does not take into consideration a midwife's right to be presumed innocent nor does it take into consideration her right to anonymity. Therefore I believe it should be re-written in order to avoid a violation of these rights. When a complaint is filed with the Midwifery Board, the midwife is assigned a case number and her name is not permitted to be used during the hearing process. The reasons for these practices is to protect the midwife's privacy and anonymity. The midwife does not even have to attend her own hearing. Her anonymity is protected, as it

should be, because she is also presumed innocent. If a student participated in the care of a client and was directly involved in a situation which resulted in a complaint, she has a right to know about the complaint but not because the midwife should be presumed guilty but because of her own involvement in the situation. However, if the student was not involved in the situation, she has no more right to know about the complaint against the midwife than anyone else because the midwife still has the right to be presumed innocent and the right to anonymity. Only if the midwife is found in violation of a rule or act or if the student was involved in the situation which resulted in a complaint should it be required for the midwife to inform the student. I would also like to propose one change to the following: 11. 12. If a complaint is filed against a supervising midwife is found in violation of a midwifery rule or act, the Texas Midwifery Board's Complaint Review Committee shall consider and may propose a restriction or prohibition on the supervision of apprentices/students in accordance with 22 Texas Administrative Code §831.169 Disciplinary Action (a)(3). Explanation: Again, the midwife is presumed innocent. Therefore the Midwifery Board's Complaint Review Committee should not consider or propose any restriction or prohibition on the supervision of apprentices or students before she is found in violation of the rules or act. Comments Regarding the "Supervising Midwife/Apprentice Complaint Disclosure form": In light of my comments listed above, I would also like to make the following proposed changes for the "Supervising Midwife/Apprentice Complaint Disclosure form": On the front page I would recommend that the first paragraph in the second box be amended to read as follows: As a supervising midwife, it is my responsibility to disclose information to the apprentice regarding any past or current complaints that have resulted in any disciplinary action, and any complaints that develop during the student's clinical training which directly involved the student. Regarding the back side of this form I would like to make one more observation and add a comment concerning my observation. The second sentence in the next to last paragraph reads, "It is important for you to be aware of any complaints that originate from patient care in which you participated." emphasis mine I wish to point out that I agree with this statement completely. Please note that this wording is a part of your own proposal. I agree that it is important for students to be aware of complaints which "originate from a patient care in which [they] participated." I would encourage you to make the rest of this document consistent with this same line of reasoning but to otherwise protect the midwife's right to be presumed innocent.