



Standards of Practice

Client Protection: Sexual Abuse and Sexual Misconduct by Registered Midwives

Date Approved by Minister of Health –

Alberta, March 15, 2019

Review date:

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Purpose:

This document is written to operationalize the Alberta Government legislation set out in *Bill 21: An Act to Protect Patients*, (November 2018), that “Albertans should feel safe when accessing health care”. This *Act* legislates the protection of clients in health care situations against sexual abuse and sexual misconduct from their health care professionals. The College of Midwives of Alberta (CMA) is committed to increasing the protection of clients from sexual abuse and sexual misconduct by Registered Midwives.

These client protection Standards of Practice of the College of Midwives of Alberta (CMA), are the minimum standards of professional behavior and ethical conduct expected of all Registered Midwives in Alberta, and are grounded in the CMA Code of Ethics (2019), and the CMA Standards of Practice and Competencies (2019). Standards of Practice are enforceable under the Health Professions Act (HPA) and will be referenced in the management of complaints and in discipline hearings of the CMA.

The Health Professions Act does not differentiate about where workplace settings exist, (hospital, home, clinic) when referring to the Registered Midwife/client relationship. The obligation of maintaining professional boundaries lies solely with the Registered Midwife, not the client.

These Standards pertain to all General, Provisional, and Courtesy Registered Midwives in Alberta, all Student Registrants in Alberta, (as defined in the *Midwifery Regulation* (December 2018)), and all Registered Midwives with practice management responsibilities in all **client care interactions during the course of midwifery care.**

Definitions:

The following words and phrases, when used in these Standards, whether they appear capitalized, in lower case, in plural or singular form, have the meaning as set out below.

“Adult Interdependent Partner” is subject to the *Adult Interdependent Relationships Act SA 2002, c.A-4.5*, “a person is the adult interdependent partner of another person if;

- a.) The person has lived with the other person in a relationship of interdependence
 - i.) For a continuous period of not less than 3 years, or
 - ii.) Of some permanence, if there is a child of the relationship by birth or adoption, or
 - iii.) The person has entered into an adult interdependent relationship partner agreement with the other person under section 7”

“Adult Interdependent Relationship” is a relationship outside of marriage between two persons who share one another’s lives, are emotionally committed to each other, and function as an economic and domestic unit.

“Client”: is the term typically used in midwifery practice for ‘patient’. A midwifery client is a person who contracts with the Registered Midwife or group of midwives, for the professional service of midwifery care, or has, or had received midwifery services within the last year. Client is also considered to be a newborn infant of the parent/person who holds the midwifery contract. Individuals are considered to be clients for the duration of the midwifery contract (see “Course of Midwifery Care”), as well as the duration of an episodic care situation.

“Course of Midwifery Care” is defined as the time span between when the client contract is initially signed between client and midwife, until the time when the contract finishes (usually after birth).

“Employers” are defined by *Bill 21* and the *HPA* as: anyone who pays, or contracts, or consults, or enters into a work agreement with Registered Midwives. Examples of employers include AHS PMAO (Provincial Midwifery Administration Office), and Midwifery Group practice owners, through the contract and agreement process related to midwifery services.

“Employment” is defined as work as a paid/unpaid employee, consultant, contractor, or volunteer. [s. 57(3) HPA].

“Episodic Care” refers to those situations where the Registered Midwife sees a client on only single occasions, for example, but not limited to: locum work, second birth attendant situations, and group practice clinic visits. Neither the midwife nor the client have the expectation of continuing care and the therapeutic and professional relationship.

“Midwifery Care/Service” means the care that falls within the scope of practice of the Registered Midwife to a client.

“Professional Boundary” is an accepted social, physical, or psychological space between people that clarifies their respective roles and expectations; it also creates an appropriate therapeutic distance between the Registered Midwife and the client.

“Regulated Member” is defined as: a Registered Midwife in Alberta, who is within the following categories: all General, Provisional, and Courtesy; all Student Registrants in Alberta, (as defined in the *Midwifery Regulation* (December 2018), and all Registered Midwives with practice management responsibilities.

“Sexual abuse” according to *Bill 21*, and the legislated regulation, [s.2(b) of Bill 21, s. 1(1)(nn.1) of HPA, means: the threatened, attempted, or actual conduct of a regulated member toward a patient that is of a sexual nature and includes any of the following conduct:

- Sexual intercourse between a Registered Midwife and a client of that midwife;
- Genital to genital, genital to anal, oral to genital, or oral to anal contact between a Registered Midwife and a client of that midwife;
- Masturbation of the Registered Midwife by, or in the presence of, a client of that midwife;
- Masturbation of the Registered Midwife’s client by that midwife;
- Encouraging a Registered Midwife’s client to masturbate in the presence of that midwife;
- Touching of a sexual nature of a client’s genitals, anus, breasts or buttocks by the Registered Midwife.

“Sexual Misconduct” is defined by *Bill 21* as: “any incident or repeated incidents of objectionable or unwelcome conduct, behavior or remarks of a sexual nature by a regulated member who knows or ought to reasonably know will or would cause offence or humiliation to the patient or adversely affect

the patient's health and well-being but does not include sexual abuse", [s. 2(b) of *Bill 21*, s.1(1) (nn.2) of *HP*]. This includes: "harassment, voyeurism, and online sexual misconduct.

"Sexual Nature" according to *HPA* [s. 1(1), nn.3] does NOT include any conduct, behavior or remarks that are appropriate to the professional service provided. In other words, touching of the client's body by the Registered Midwife does not constitute Sexual Abuse if the touching is appropriate to the health care service being provided. Registered Midwives are reminded of the obligation to obtain a client's consent when they initially come into care and prior to an examination, assessment, treatment or procedure. Written consent or explicit oral consent should be in place and documented whenever a midwifery interaction involves touching the client. (See Standard 1: Registered Midwife/Client Relations section below).

"Spouse" is a person legally married to a Registered Midwife.

"Therapeutic Relationship" a planned and interpersonal process occurring between the Registered Midwife and client that is established for the purposes of midwifery care.

"Transference" "the redirection of feelings and desires unconsciously toward a new object or person." The desire for clients to connect with a caring person in a meaningful way is completely valid. But acting on it in a sexual way with a midwife is never an option. Transference may also occur from the midwife towards the client.

Implications of the Act to Protect Patients:

Mandatory Sanctions for Sexual Abuse/Sexual Misconduct will occur.

A finding of Sexual Abuse by the Hearing Tribunal against the Registered Midwife mandates cancellation of their practice permit. If the Hearing Tribunal makes a finding of unprofessional conduct, based on sexual abuse of a client, (as described in the definition of sexual abuse), the Hearing Tribunal **must** order cancellation of the Registered Midwife's registration and practice permit [s. 15 *Bill 21*, s. 81 (1.1) HPA], **with no possibility of reinstatement**. This also extends to the ability to work in **any** regulated health profession in the province of Alberta (those members who hold dual/multiple registrations).

If the Hearing Tribunal makes a finding of unprofessional conduct based on sexual misconduct toward a client, (as described in the definition of sexual misconduct), the Hearing Tribunal **must** order a suspension (determined to be appropriate), of the Registered Midwife's practice permit.

Any Registered Midwife found guilty of either sexual abuse and/or sexual misconduct will have immediate suspension of their practice permit, even before a written decision from the Hearing Tribunal.

The Hearing Tribunal must also prevent the midwife from applying for reinstatement for at least five (5) years if their practice permit has been cancelled as a result of conduct deemed to be sexual misconduct.

In addition, if the Hearing Tribunal finds conduct of a Registered Midwife considered to be unprofessional conduct under the Health Professions Act, a Hearing Tribunal can impose a range of sanctions including suspensions and cancellation of registration and practice permit.

Standard 1: Therapeutic and Professional Boundaries

Registered Midwives must establish and maintain appropriate therapeutic relationships and professional boundaries with clients in a transparent and ethical manner at all times. The Registered Midwife abstains from conduct, behavior or remarks directed towards the client that constitutes sexual abuse or sexual misconduct, as defined by *the Health Professions Act, Bill 21 (Amended November 19, 2018)*.

This standard outlines the expectations of the Registered Midwife in therapeutic and professional relationships with clients, and helps ensure client safety and trust by maintaining appropriate relationships. A boundary violation occurs when the Registered Midwife abuses their authority over a client; sexual relations between the midwife and the client are abusive and unethical, and constitute a breach of trust. Performance Expectations, related to: Client Relations, Prohibitions, Providing Midwifery Services to Spouses and Others, and When Midwives Provide Episodic Care are included within this standard.

Performance Expectations:

Clients can expect midwifery services will be free from conduct, behavior or remarks of a sexual nature, and that the Registered Midwife will establish and maintain professional boundaries appropriate to the midwifery care relationship in all interactions with clients.

A. Client Relations:

It is the responsibility of the Registered Midwife to:

- 1.) Maintain ethics, demonstrate respect for and sensitivity to personal boundaries, and clarify the roles and goals in the Registered Midwife/client relationship. This relationship is formed when a client initiates a contract with a Registered Midwife for professional services.
- 2.) Consult with the CMA, CMA Standards of Practice and Competencies, Code of Ethics, if there is uncertainty about the extent of a professional boundary.

Registered Midwives are reminded of the obligation to obtain a client's consent when they initially come into care and prior to an examination, assessment, treatment or procedure. Written consent or explicit oral consent should be in place and documented whenever a midwifery interaction involves touching the client.

When a client begins midwifery care, a consent conversation about sexual abuse and misconduct is undertaken with respect to the professional scope of midwifery practice, and this conversation will be documented by way of a signed contract as part of an **initial intake agreement**, or within the client health record (paper or electronic). The Registered Midwife takes all reasonable steps to confirm the

client's understanding of the midwifery activities and their rationale for care. As long as the client fully understands the process and implications, the relationship can continue.

When a client presents for Episodic Care, (see below) the same standard applies to the Registered Midwife as for clients contracting for a Course of Midwifery Care.

The Registered Midwife must establish and maintain professional boundaries in any interaction with a client by way of providing private conversation space, adequate draping, privacy while client is dressing and undressing, and using appropriate examination techniques when touching sensitive or personal areas of the body.

Prior to touching a client's breast, anus, genitals or buttocks, the Registered Midwife must ask permission, and get verbal consent from the client.

Documentation must be done with each consent. (Emergency situations are exempt).

B. Prohibitions:

There can be no acceptable consensual sexual relations between a Registered Midwife and client during the course of the midwifery client contract. This is due to the inherent power imbalance between care provider and client.

The Registered Midwife must refrain from:

- a.) any behavior, either physical or verbal, with a client that could be reasonably be perceived to be of a sexual nature to that client, (abusive, suggestive, harassing, inappropriate and non-consensual physical contact).
- b.) promoting their personal or religious beliefs or causes to a client in the context of the Registered Midwife/client relationship.
- c.) any conflict of interest or risk of coercion when engaging with a client in a non-clinical context (eg, a personal, social, financial or business relationship).

The HPA prohibits sexual relations between the Registered Midwife and the client. Therefore, a midwife must ensure that the Registered Midwife/client therapeutic and professional relationship is terminated before engaging in a sexual relationship with a former client. An individual is considered to be a 'client' for the purposes of the Sexual Abuse provisions for a one year period after the date of the last clinical encounter where a health service was provided by the Registered Midwife. Therefore, commencing an intimate or sexual relationship with former clients can only occur when:

- a.) more than one year has elapsed since the client was discharged from midwifery care,
- b.) the professional relationship has ended and
- c.) there is minimal risk of a continuing power imbalance as a result of the professional midwifery/client relationship.

Sexual conduct beyond one year after the end of the Registered Midwife/client relationship may still be considered inappropriate, if there is more than minimal risk of a continuing power imbalance. A non-exhaustive list of considerations in determining whether there is more than a minimal risk of this imbalance is below. Registered Midwives must consider the following factors to assist in determining if it is ever appropriate to enter into a sexual relationship with a former client:

- a.) the number of times that the Registered Midwife and the client had professional interaction
- b.) the duration and intensity of the professional relationship
- c.) the nature of the professional relations
- d.) whether this is a situation where there is a likelihood of inappropriate transference
- e.) whether the client understands the inherent power imbalance that typically exists with the Registered Midwife/client relationship
- f.) whether sufficient time has passed since the last professional interaction occurred
- g.) whether the client has confided close personal or sexual information to the Registered Midwife beyond that which was necessary for the purposes of receiving professional services
- h.) whether the client was emotionally dependent on the Registered Midwife
- i.) whether the Registered Midwife/client relationship was established while the client was a minor

j.) whether the client is particularly vulnerable as a result of factors such as: age, gender identity, socioeconomic status, or as a result of mental, intellectual or physical disability, or diminished capacity in any way.

Beyond the one year period, sexual conduct with a former client, given all of the above factors, is not considered to be Sexual Abuse.

However, such conduct may be considered to be unprofessional conduct by a Hearing Tribunal. After making a finding of unprofessional conduct, a Hearing Tribunal can impose a range of sanctions, including suspension or cancellation of registration and practice permit.

C. Providing Midwifery Services to Spouses and Others

Registered Midwives will only provide midwifery care to an individual with whom they have had pre-existing sexual, spousal, or adult interdependent relationship that is ongoing if:

a.) the services are provided to address an urgent or emergent care need,

OR

b.) no other registered health professional with the specific skills required is available.

If Registered Midwives cannot avoid providing services to an individual with whom they have a pre-existing sexual, spousal, or adult interdependent relationship, that is ongoing must:

a.) fully disclose and document the situation, indicating how the midwifery care relationship is to the client's benefit and complies with regulatory requirements.

b.) follow formal processes and document all midwifery care provided.

For the purposes of the sexual abuse provisions in the Health Professions Act, a person receiving professional services from a Registered Midwife **is not** considered to be a client as defined in the HPA with respect to Sexual Abuse or Sexual Misconduct if the Registered Midwife is their spouse or adult

interdependent partner or if they are in a pre-existing relationship. However, the midwife who provides midwifery care to a spouse, adult interdependent partner, or individual with whom they have had a pre-existing sexual relationship outside of the above situations may be found by a Hearing Tribunal to have engaged in unprofessional conduct. After making a finding of unprofessional conduct, a Hearing Tribunal can impose a range of sanctions, including suspension or cancellation of registration and practice permit.

D. When the Registered Midwife Provides Episodic Care

The Registered Midwife may provide episodic care to a client when there is no expectation of continuing care, and there is no expectation of the therapeutic and professional relationship. A midwife providing episodic care to a client may be only on single occasions, for example, but not limited to: locum work, second birth attendant situations, group practice clinic visits. During these episodes, midwifery care may include: collection and documentation of any relevant history, assessing and providing midwifery care as appropriate, and documenting the clinical encounter on the client health record so the primary Registered Midwife can access the documentation.

For the purposes of the Sexual Abuse and Sexual Misconduct provisions, the Registered Midwife/client relationship is formed during the provision of episodic care. So, the Registered Midwife who engages in the type of activity described in the definition of Sexual Abuse or Sexual Misconduct, while providing episodic care will be considered to have committed Sexual Abuse or Sexual Misconduct.

The individual who is receiving midwifery care is not considered to be a client after the completion of episodic care. However, sexual conduct at any time after the conclusion of episodic care may still be considered inappropriate if there is a risk on an ongoing power imbalance. The considerations outlined in the Prohibitions section above, must be considered.

Sexual conduct after the one-year period with a former client who has received episodic care, given all of the above considerations, is not considered to be Sexual Abuse. However, such conduct may be considered by a Hearing Tribunal to be unprofessional conduct under the HPA.

After making a finding of unprofessional conduct, a Hearing Tribunal can impose a range of sanctions, including suspensions and cancellation of registration and practice permit.

Standard 2: Mandatory Duty to Report Sexual Abuse and Sexual Misconduct of Other Health Professionals:

Performance Expectations:

The Registered Midwife who has reasonable grounds to believe the conduct of another Registered Midwife or another regulated member of any college constitutes sexual abuse or sexual misconduct, has a duty to report such conduct to the complaints director of the CMA or of the applicable college.

A: Fitness to Practice:

When fitness to practice is in question, the Registered Midwife must report any other Registered Midwife or other health care professional if they have reasonable grounds to believe that the emotional, mental, physical, cognitive conditions and or behavior places the public at risk or constitutes unprofessional conduct as defined by the Health Professions Act, the CMA Code of Ethics and/or the CMA Standards of Practice and Competencies.

B: Role of Employers:

Mandatory reporting by the employer is triggered in alleged sexual abuse/misconduct even if the Registered Midwife is not terminated, suspended or resigned.

The *HPA* s. 57. [s 9 Bill, s. 57 *HPA*] states that employer's **mandatory** reporting obligation to the CMA Complaints Director is triggered if:

The Registered Midwife is terminated, suspended, or resigns,
and

The Registered Midwife is terminated, suspended, or resigned because where the employer forms the opinion that the member is engaged in unprofessional conduct.

In addition, employers are required to report as soon as reasonably possible, once opinion is formed, and give notice of the conduct in a report to the CMA Complaints Director [s 9(b) *Bill 21*, s. 57(1.1) *HPA*].

Standard 3: Self-Reporting by Registered Midwives

Performance Expectations:

Registered Midwives have an obligation to self-report to the CMA Registrar any finding of unprofessional conduct as soon as possible. This self-reporting includes all unprofessional conduct through relevant regulatory bodies with whom they are a registered member.

Reporting of Unprofessional Conduct:

Report to the CMA Registrar:

- 1.) If another College has found them guilty of unprofessional conduct, Registered Midwives must provide a copy of that decision to the CMA Registrar,
- 2.) When the Registered Midwife is a regulated member in another jurisdiction and is found guilty of unprofessional conduct, they must provide a copy of that decision to the CMA Registrar, eg. when they have been charged with an offense under the Criminal Code (Canada) or have been convicted of an offence under the Criminal Code (Canada)
- 3.) When fitness to practice is in question, a Registered Midwife must self-report to the CMA Registrar if they have reasonable grounds to believe that their own emotional, mental, physical, cognitive conditions and or behavior places the public at risk or constitutes unprofessional conduct as defined by the Health Professions Act, the CMA Code of Ethics and/or the CMA Standards of Practice and Competencies.

NOTE: Conduct, behavior or remarks that would otherwise constitute sexual abuse or sexual misconduct of a client by a Registered Midwife as defined by the Health Professions Act do NOT constitute sexual abuse or sexual misconduct if all conditions and requirements for providing midwifery services to an individual with whom they have had pre-existing sexual, spousal, or adult interdependent relationship are met.

Resources:

Alberta Midwifery Regulation (2018)

Bill 21, An Act to Protect Patients. (2018) Available at: <https://www.alberta.ca/protecting-patients-against-sexual-abuse.aspx>

CMA Code of Ethics (2018)

CMA Standards of Practice (2018)

HPA, Health Professions Act (2001).

Interdependent Relationships Act (2014)