

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 16-121
Hawaii Administrative Rules

MM DD, YYYY

1. Chapter 16-121, Hawaii Administrative Rules,
entitled "Midwives", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 121

MIDWIVES

Subchapter 1 General Provisions

- §16-121-1 Objective
- §16-121-2 Definitions
- §16-121-3 Renewal; restoration of license

Subchapter 2 Scope of Practice

- §16-121-4 Scope of practice; licensed midwives;
certified professional midwives and
certified midwives

- §16-121-5 Care provided by licensed midwives;
requirements
- §16-121-6 Authority to purchase, administer, and
store certain legend drugs and devices

Subchapter 3 Unprofessional Conduct

- §16-121-7 Unprofessional conduct; types of
unprofessional conduct
- §16-121-8 Grounds for refusal to renew, reinstate,
or restore a license and for revocation,
suspension, denial, or condition of a
license; proceedings; hearings

SUBCHAPTER 1

GENERAL PROVISIONS

§16-121-1 Objective. This chapter is intended to clarify and implement chapter 457J, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest most effectively served. [Eff _____] (Auth: HRS §§457J-1, 457J-4) (Imp: HRS §26-9(b))

§16-121-2 Definitions. As used in this chapter:

"Community birth" means birth taking place in a birth center, home, or location within the community.

"Encumbered" means any restriction on a license or privilege to practice based on disciplinary action taken by this State or another jurisdiction.

"Licensed midwife" means a person who is a certified midwife or certified professional midwife:

- (1) Who engages in the practice of midwifery;

(2) Who has been issued a license under this chapter; and

(3) Whose license is in effect and not revoked.

"Midwifery" means providing care to women and infants but that does not include and that goes beyond mere casual, informal, social, or isolated interactions such as when family members provide support and assistance; no compensation or consideration is received; there is an absence of a formal professional-client relationship; minimal or incidental levels of support or assistance are provided; and there are no verbal or written representations about professional qualifications, skills, experience, credentials, licenses, or certifications. [Eff _____] (Auth: HRS §457J-4) (Imp: HRS §§26-9(b), 457J-2)

§16-121-3 Renewal; restoration of license. (a)

Licenses issued pursuant to this chapter shall be renewed triennially on or before June 30, with the first renewal deadline occurring on June 30, 2023. Licenses shall be renewed upon the submission of a complete renewal application and payment of renewal fees within sixty days before the expiration of the license.

(b) Failure to renew a license shall result in forfeiture of that license. Forfeited licenses may be restored within one year of the forfeiture date upon payment of renewal and restoration fees. Failure to restore a forfeited license within one year shall result in the automatic termination of the license. A person whose license has been terminated pursuant to this section shall be required to reapply for a new license as a new applicant.

(c) Any midwife who fails to renew or restore a license as provided in subsection (a) or (b) but continues to practice shall be considered an illegal practitioner and shall be subject to the penalties provided for violation of this chapter. The failure to timely renew a license, the failure to pay all

applicable fees, or the dishonoring of any check upon first deposit shall cause the license to be automatically forfeited; provided that the person's license may be restored upon compliance with the licensing restored.

(d) For each license renewal or restoration, the licensed midwife shall:

- (1) Submit a renewal or restoration application on a form prescribed by the department;
- (2) Pay all required renewal or restoration fees;
- (3) Provide proof of current certification:
 - (A) As a certified midwife by the American Midwifery Certification Board or a successor organization; or
 - (B) As a certified professional midwife by the North American Registry of Midwives or a successor organization;
- (4) Provide certified documentation from agencies or persons relating to any disciplinary action ordered by or pending before any regulatory board in any state or jurisdiction of the United States within the three years prior to application for renewal of recognition; and
- (5) Provide information including but not limited to certified documents from appropriate agencies and persons regarding any criminal conviction within the past three years that has not been annulled or expunged. [Eff _____] (Auth: HRS §457J-4) (Imp: HRS §§26-9(b), 457J-10)

SUBCHAPTER 2

SCOPE OF PRACTICE

§16-121-4 Scope of practice; licensed midwives; certified professional midwives and certified midwives.

(a) Practice as a licensed midwife means providing independent primary care services and management of health care for persons with female reproductive systems, focusing particularly on family planning, gynecological needs, essentially healthy pregnancy and childbirth, the postpartum period, and care of the newborn through the provision of professional services commensurate with the educational preparation and demonstrated competency of the individual having specialized knowledge, judgment, and skill based on the principles of the biological, physical, behavioral, and sociological sciences and midwifery theory, whereby the individual shall be accountable and responsible to the consumer for the quality of midwifery care rendered.

Practice as a licensed midwife includes but is not limited to observation, assessment, development, implementation, and evaluation of a plan of care; health counseling; teaching of other personnel; teaching of individuals, families, and groups; administration, supervision, coordination and evaluation of midwifery practice of a student midwife; and provision of health care to the client in collaboration with other members of the health care team as autonomous health care professionals providing the midwifery component of health care.

(b) Practice as a certified midwife means the full scope of midwifery, which incorporates caring for all clients in all settings and is guided by the scope of practice authorized by this chapter, including but not limited to:

- (1) Advanced assessment, selection, and administration of therapeutic measures, including over the counter drugs; legend drugs; and devices pursuant to section 457J-11, HRS; and
- (2) The Standards of Practice of the American College of Nurse-Midwives and American Midwifery Certification Board, or successor organizations; provided that the American

College of Nurse-Midwives shall have no legal authority over the director and shall have no legal authority or powers of oversight of the director in the exercise of the director's powers and duties authorized by law.

(c) Practice as a certified professional midwife means the full scope of midwifery that incorporates caring for all clients in all settings and is guided by the scope of practice authorized by this chapter, including but not limited to:

- (1) Advanced assessment, selection, and administration of therapeutic measures pursuant to section 457J-11, HRS and within the certified professional midwife's education, certification, and role; and
- (2) The Job Analysis and the Comprehensive Skills, Knowledge and Abilities Essential for the Competent Midwifery Practice defined by the North American Registry of Midwives, or successor organization, provided that the North American Registry of Midwives shall have no legal authority over the director and shall have no legal authority or powers of oversight of the director in the exercise of the director's powers and duties authorized by law.

(d) The practice of midwifery is based on and is consistent with a licensed midwife's education and national certification including but not limited to:

- (1) Evaluating the physical and psychosocial health status of clients through a comprehensive health history and physical examination, using skills of observation, inspection, palpation, percussion, and auscultation, and using diagnostic instruments and procedures;
- (2) Directing the midwifery care given by other personnel associated with the health care team;
- (3) Providing education and counseling related to the health care for persons with female

reproductive systems, focusing particularly on essentially healthy pregnancy and childbirth, the postpartum period, care of the newborn, and the family planning and gynecological needs of persons with female reproductive systems;

- (4) Ordering and interpreting screenings and diagnostic tests;
- (5) Initiating and maintaining accurate records and authorizing appropriate regulatory and other legal documents;
- (6) Providing informed consent in adherence with the licensee's professional requirements;
- (7) Serving as a consultant and resource of advanced clinical knowledge and skills to those involved directly or indirectly in client care;
- (8) Operating within a health care system that provides for consultation, collaborative management, and referral with other health care professionals;
- (9) Referring clients who require care beyond the scope of practice of the licensed midwife to an appropriate health care provider;
- (10) Admitting and discharging clients for inpatient care at facilities licensed in the State as:
 - (A) Hospitals; provided that this subparagraph shall only apply to licensed midwives practicing as certified midwives; and
 - (B) Birth centers;
- (11) Participating in joint and periodic evaluation of services rendered such as peer review, including chart reviews, case reviews, client evaluations, and outcome of case statistics; and
- (12) Participating in policy analysis and development of new policy initiatives in the area of practice specialty to improve

quality of health care services and consumer access to services.

(e) A licensed midwife shall comply with the requirements of this chapter; participate in data collection and peer review requirements adopted by the department; recognize limits of the licensed midwife's knowledge and experience and plan for the management of situations that exceed the scope of authorized practice; and consult with or refer clients to other health care providers, as appropriate.

(f) Nothing in this chapter shall prohibit healing practices by traditional Hawaiian healers engaged in traditional healing practices of prenatal, maternal, and child care as recognized by any council of kupuna convened by Papa Ola Lokahi. Nothing in this chapter shall limit, alter, or otherwise adversely impact the practice of traditional Native Hawaiian healing pursuant to the Constitution of the State of Hawaii. [Eff _____] (Auth: HRS §457J-4) (Imp: HRS §§26-9(b), 457J-2, 457J-6)

§16-121-5 Care provided by licensed midwives; requirements. (a) Licensed midwives shall continually assess the appropriateness of the planned location of birth and shall take into account the health and condition of the mother and baby and the licensed midwife's scope of practice. Licensed midwives may refer to the American College of Nurse-Midwives Clinical Bulletin: Midwifery Provision of Home Birth Services (November 2015), or succeeding document, in order to evaluate risks associated with the planned location of birth; provided that the American College of Nurse-Midwives Clinical Bulletin: Midwifery Provision of Home Birth Services (November 2015) or succeeding document shall have no legal authority or powers of oversight of the director in the exercise of the director's powers and duties authorized by law.

(b) If the licensed midwife determines that a condition of the mother, baby, or both, is outside of

the licensed midwife's scope of practice, the licensed midwife shall refer the client to an appropriate health care provider.

(c) If the licensed midwife is attending a community birth and determines during the licensee's care that the client faces imminent morbidity or mortality, the licensed midwife shall activate the 911 emergency system. [Eff _____] (Auth: HRS §457J-4) (Imp: HRS §26-9(b))

§16-121-6 Authority to purchase, administer, and store certain legend drugs and devices. (a) Licensed midwives shall be authorized to obtain and administer non-controlled legend drugs or devices during the practice of midwifery as allowed by law.

(b) A licensed midwife shall:

- (1) Store all drugs in secure areas suitable for preventing unauthorized access and for ensuring a proper environment for the preservation of the drugs; and
- (2) Maintain proper records of obtaining, storing, and administering drugs and devices. [Eff _____] (Auth: HRS §457J-4) (Imp: HRS §§26-9(b), 457J-11)

SUBCHAPTER 3

UNPROFESSIONAL CONDUCT

§16-121-7 Unprofessional conduct; types of unprofessional conduct. Midwifery behavior which fails to conform to standards of the midwife profession and which reflects adversely on the health and welfare of the public shall constitute unprofessional conduct. The types of unprofessional conduct include but are not limited to:

- (1) Impersonating any applicant, acting as proxy for the applicant in any midwife certifying examination, allowing any person to use one's midwife license, or aiding, abetting, or assisting an individual to violate or circumvent this chapter;
- (2) Practicing midwifery within the State without a valid and current license or being exempt under section 457J-6, HRS;
- (3) Misrepresenting that the person is a licensed midwife, verbally or in writing, when the person does not possess the appropriate license;
- (4) Performing unsafe client care or failing to conform to professional standards required of a midwife which poses a danger to the welfare of a client including:
 - (A) Intentionally or negligently causing physical or emotional injury to a client;
 - (B) Administering medication and treatment in a careless or negligent manner;
 - (C) Failing to take appropriate action or follow policies and procedures in the practice setting designed to safeguard the client;
 - (D) Failing to take appropriate action in safeguarding a client from incompetent health care practices;
 - (E) Performing midwifery techniques or procedures without proper education and training;
 - (F) Violating the confidentiality of information or knowledge concerning the client or failing to safeguard the client's dignity and right to privacy; and
 - (G) Leaving a midwifery assignment or abandoning a client without properly notifying appropriate personnel; and
- (5) Engaging in any act inconsistent with the practice of midwifery as defined in this

chapter for that of a licensed midwife including:

- (A) Engaging in conduct which evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client;
- (B) Willfully, or deliberately, falsifying or altering the records of a client, health care facility, or employee record; and
- (C) Unauthorized use or removal of drugs, supplies, or property from a client or health care facility, institution, or other work place location; diverting or attempting to divert drugs or controlled substances for unauthorized use; or appropriating money, supplies, or equipment. [Eff _____]
(Auth: HRS §457J-4) (Imp: HRS §26-9(b))

§16-121-8 Grounds for refusal to renew, reinstate, or restore a license and for revocation, suspension, denial, or condition of a license; proceedings; hearings. (a) In addition to any other actions authorized by law, the director shall have the power to deny, revoke, condition, or suspend any license to practice midwifery as a licensed midwife applied for or issued by the department in accordance with this chapter, and to fine or to otherwise discipline a licensee for any cause authorized by law, including but not limited to the following:

- (1) Unprofessional conduct as defined in this chapter;
- (2) Engaging in the practice of midwifery in a manner that causes injury to one or more members of the public;
- (3) Mental incompetence;
- (4) Willful or repeated violation of any of the provisions of this chapter;

- (5) Submitting to or filing with the board any notice, statement, or other document required under this chapter that is false or untrue or contains any material misstatement of fact; or
- (6) Submitting information to the director pursuant to an application for licensure, renewal of licensure, or reinstatement of licensure which is fraudulent, deceitful, or contains misrepresentations.

(b) Any fine imposed by the board after a hearing in accordance with chapter 91 shall be no less than \$100 and no more than \$1,000 for each violation.

(c) The remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State." [Eff _____] (Auth: HRS §457J-4) (Imp: HRS §§26-9(b), 457J-12)

2. The adoption of chapter 16-121, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on MM DD, YYYY, and filed with the Office of the Lieutenant Governor.

NADINE Y. ANDO
Director of Commerce and
Consumer Affairs

APPROVED AS TO FORM:

SHARI WONG
Deputy Attorney General