

COLLEGE OF MIDWIVES OF BRITISH COLUMBIA

INFORMATION SHEET FOR REGISTERED MIDWIVES ON THE INQUIRY AND DISCIPLINE PROCESS

*This information sheet is designed to help you, as a registered midwife, understand the steps involved if a complaint is lodged against you. The College of Midwives of BC (CMBC) has a process it must follow to investigate and address complaints in a way that protects the interests of the public while treating members of the College with fairness and respect. The process followed by the College can be found in the **Health Professions Act**, which is in the Introduction section of your Registrant's Handbook - See Part 3 – Inspections, Inquiries and Discipline, and in Part VI of the College bylaws, under CMBC in your Handbook.*

Responsibilities of the CMBC

The CMBC has a legislated duty to protect the public under the *Health Professions Act (HPA)*. As a member of a profession governed by the *HPA* you may, at some point in your career as a midwife, be the subject of a complaint registered with the College. A complaint may be lodged by a client, a client's family, another midwife, another health professional, any member of the public, or by the College itself. It is the responsibility of the College, as the governing body for registered midwives in BC, to deal with all complaints received concerning the professional or ethical conduct, competence or fitness to practice of registered midwives.

The following are examples (and not an exhaustive list) of conduct, which the Inquiry Committee might investigate¹:

- A contravention of the Act, regulations or bylaws;
- failing to abide by the standards of practice;
- failing to comply with a limit or condition on registration;
- failing to consult with another health professional or to transfer the care of a client who is in need of specialist care when required;
- discontinuing necessary services without arranging for alternative services;
- giving out information about a client without the client's consent;
- incompetence;
- practicing while incapacitated or impaired;
- verbal, physical, emotional or sexual abuse²;
- other issues of professional conduct.³

¹ See Part 3, Section 33 (4) of the *Health Professions Act*

² The CMBC takes all forms of abuse very seriously. The College, however, understands that professional supportive behaviour may include physical contact that is nurturing or helpful and acceptable to the client.

³ See CMBC Bylaws Part VI, Section 60.

The Inquiry Process

The Inquiry process addresses concerns about professional midwifery practice. The Inquiry Committee directs the investigation of all complaints, whenever possible resolving them by consent. According to the College's legislated mandate, the goal is to ensure that BC midwives remain competent, practice within established standards and provide safe care. The Inquiry process is not about ensuring outcomes, assessing injury or awarding compensation. In some cases, however, the Inquiry Committee may be investigating a complaint that is also the subject of a civil litigation.

The Inquiry process can address concerns about professional communication and informed choice. It is not about making sure every midwife is the "ideal personality" for every client. If a complaint is found to be frivolous, vexatious or made in bad faith, the committee does have the ability to dismiss it at a fairly early stage.

When a complaint is received by the registrar, she may seek clarification from the complainant. The registrar asks for a complaint to be put in writing. The complainant must be identified, and the complaint must raise concerns about specific actions or behaviours of a registrant or former registrant in order to be referred to the Inquiry Committee.

When the registrar refers a complaint about you to the Inquiry Committee, the Inquiry Committee Chair appoints an Inquiry Panel to investigate the complaint. The Panel will be composed of three members, two professional members who do not work with or have a personal relationship with the midwife who has been complained about, and one public member of the Inquiry Committee. The Panel is independent and members have no prior knowledge of the situation under investigation. If there is reason to believe that incapacity is involved, the chair may appoint a Fitness-to-Practice Panel.

You will be notified and provided with a copy or summary of the complaint. As required by the Act, the registrar will ask that you provide the Panel with your comments concerning the complaint. This is to protect you and give you the opportunity to tell your side of the story.

You will likely be asked to provide the College with a copy of your records of care. The *HPA* requires that you provide your records to the College when requested. You do not need the client's consent to do so. The College takes great care to protect the confidentiality of these records within its Inquiry and Discipline processes.

You may wish to contact your professional association (the Midwives Association of BC) or your professional liability insurer before responding to the complaint. You should be aware that the information you give the College is NOT protected from use in subsequent proceedings (e.g. a Health Professions Review Board hearing). After your comments are received, they may be shared with the complainant, particularly if the Panel believes that this will assist in resolving the complaint or clearing up a misunderstanding.

The Inquiry Committee Chair or the Inquiry Panel may direct the registrar to investigate the complaint or may appoint an outside investigator, who will interview and take statements from the people who were involved in the events surrounding the complaint. This person is considered an "inspector" under the Act. You may also be asked to speak to this person. While this is not an adversarial process, you may want to have legal advice before your interview or ask your lawyer to be present.

The Inquiry Panel will review the letter of complaint, the records of care, your response, and other materials developed in the investigation. The Panel may ask the inspector to obtain more information. When the investigation is complete and the Panel has heard from everyone involved, including hearing your side of the story, it makes its findings.

The Inquiry Panel is responsible for determining if there is sufficient information to substantiate the complaint. At the conclusion of the review of the complaint, the Panel may:

- 1) dismiss the complaint; or
- 2) request that you do one or more of the following:
 - a) agree not to repeat the conduct (a common response if the conduct only happened once and was not dangerous);
 - b) agree to take specific educational courses;
 - c) consent to a reprimand;
 - d) consent to any other specified action, which could include such things as conditions on your registration, supervision or mentoring.

If the Panel believes that there are issues that can be resolved by consent, they will ask the registrar to contact you and propose an undertaking or consent agreement. You may negotiate with the College about the content of the final agreement. Consent agreements become a part of your Registration file and, upon request, may be accessed by the public for a specified period of time, up to a maximum of six years.

If, during the investigation, the Inquiry Panel is concerned about a possible ongoing risk of harm or danger to the public, the Panel may set limits or conditions on your registration, or even suspend your registration until the investigation is completed and the matter is resolved. This action is rare and is based on Section 35 of the Act, which sets out the extraordinary powers of the Inquiry Committee to protect the public. You would have the right to appeal to the courts if you believed that action was not justified.

Complainant's Right to Review

As required by the Act, the complainant is notified of the results of the Inquiry Panel's process and, if he or she is not satisfied, the complainant may apply to the Health Professions Review Board, established under the *Health Professions Act*, for a review of the disposition made by the Inquiry Committee. The application must be made within 30 days of receiving the notification. The complainant must also within 30 days deliver a copy of the application to the College and to the midwife who is the subject of the complaint.

Upon receipt of an application, the Health Professions Review Board will conduct a review of the disposition and consider:

- a) the adequacy of the investigation conducted respecting the complaint;
- b) the reasonableness of the disposition.

On completion of its review, the Health Professions Review Board may make an order:

- a) confirming the disposition of the complaint made by the Inquiry Committee,
- b) directing the Inquiry Committee to make a disposition that could have been made by the Inquiry Committee in the matter, or
- c) sending the matter back to the Inquiry Committee for reconsideration with directions.

Within 30 days of making an order, the Health Professions Review Board will provide a copy of the order to the complainant, the midwife and the College. An order made by the Health Professions Review Board is final.

The Discipline Process

In rare cases where a registrant and the Inquiry Panel cannot reach an agreement, or if a registrant does not comply with the terms of an undertaking or agreement, or if a matter of public protection is considered so serious that it cannot be addressed by consent, the Inquiry Panel may direct the registrar to issue a citation for a Discipline Committee hearing.

A Discipline Committee hearing is conducted by a Discipline Panel appointed by the Chair of the Discipline Committee. This Discipline Panel is made up of midwife and public members who have not previously been involved in reviewing the complaint. They will act as the decision-making body at the hearing.

The Discipline Committee may set limits or conditions or suspend registration if it has concerns about public safety between the time the matter is referred and when there is a decision from the hearing.

If a complaint about you is referred to the Discipline Committee, you, the complainant and the College may all appear with legal counsel at the hearing. The College will retain counsel to prosecute and separate counsel to advise the Discipline Panel.

A Discipline hearing is a hearing in every sense of the word, with full disclosure of all of the materials in the College's file. The hearing is usually public, and testimony is taken under oath. You, or your counsel, have the right to cross-examine witnesses and call evidence in defence. The Discipline Committee has the power to order a person to attend and give evidence or produce records. A Discipline hearing can also proceed in the absence of the registrant.

The Discipline Panel may:

- dismiss the matter;
- issue a reprimand;
- impose limits or conditions on registration;
- assess the costs of the hearing against the midwife;
- fine the midwife (maximum set out in College bylaw 72); or
- suspend or cancel registration

Suspension or cancellation of registration is only used when there is a danger to the public.

Any of the parties may appeal a Discipline Committee hearing decision to the Supreme Court within 30 days after the decision.