

**MEETING of the
CERTIFIED NURSE MIDWIFE COUNCIL
Thursday, August 18, 2016 at 2:00 pm**

A G E N D A

- I. Roll Call**
- II. Old Business -**
 - Review minutes of 8/4/2016 meeting**
- III. New Business**
 - a. Review of revised draft regulations from KSBHA staff**
 - b. Discussion**
 - c. Recommendations of Council**
 - d. Set agenda for next meeting**
- IV. Adjournment**

**MEETING
of The
CERTIFIED NURSE-MIDWIFE COUNCIL
of The
KANSAS STATE BOARD OF HEALING ARTS
Thursday, August 4, 2016**

I. CALL TO ORDER - ROLL CALL

The Certified Nurse-Midwife Council of the Kansas State Board of Healing Arts (KSBHA) met on Thursday, August 4, 2016, at the KSBHA offices. The meeting was called to order at 2:00 p.m. by Kelli Stevens, General Counsel, KSBHA. The following Council members attended:

Kent Bradley, M.D.	absent
Cara Busenhart, PhD, CNM, APRN	present (via telephone)
Cathy Gordon, RN, MSN, FNP-BC, CNM	present
Joel Hutchins, M.D.	present
Chad Johanning, M.D.	present
Manya Schmidt, CNM, APRN	present
Tarena Sisk, CNM	present

Staff members present were: Kathleen Selzler Lippert, Executive Director; Kelli Stevens, General Counsel; Stacy Bond, Assistant General Counsel; John Nichols, Licensing Administrator, Jennifer Cook, Legal Assistant to General Counsel and Ryan Hamilton, Law Clerk. Also present were Rachelle Colombo from KMS; Bob Williams from KAOM; Mary Blubaugh from KSBN; Dodie Wellshear from KAFP and Kendra Wyatt from NBC.

II. OLD BUSINESS

- a. The minutes of the June 29, 2016 meeting were approved.
- b. A correction was made to the minutes for the July 14, 2016 meeting and the corrected minutes were approved.
- c. Ms. Stevens summarized the current issues before the Council and the status of regulation development.

III. NEW BUSINESS

- a. The Council discussed some of the specific sections in the draft of the definitions regulation as follows:
 1. "Normal, uncomplicated delivery" definition: The Council recommended removal of language referring to types of anesthesia as an uncomplicated delivery may require these for pain control. The issue of anesthetic use will be

addressed in another regulation stating that anesthesia could be ordered by an independent CNM for an otherwise uncomplicated labor and delivery in a hospital. VBACs and induction/augmentation of labor will also be addressed separately. The Council recommended adding “without identifiable risks” to this definition.

2. “Home birth” definition: The Council discussed whether it should only refer to a private residence vs. any location outside of a birth center or hospital. Ms. Gordon suggested using the language in the CMS location of service code which refers to the patient’s private residence in order to be consistent what services could be billed. The Council discussed whether having a broader definition would promote people opening up their homes as birth centers, using hotels, etc. It was noted that the regulations need to address all possible locations where labor and delivery may occur, and then state what is or is not permissible by location.
 3. The Council decided to defer detailed review of the rest of the definitions as the substantive regulations developed will dictate what the definitions need to say.
- b. The Council reviewed the regulation draft regarding the abbreviation, CNM-I, and the prohibitions in and exceptions to the Independent Practice of Midwifery Act. The nurse-midwife Council members expressed that the abbreviation seemed confusing and might have ramifications for prescribing, billing, EMRs, etc. because people wouldn’t be familiar with it. It was noted by Ms. Colombo that the legal distinction between this new license and the APRN nurse-midwife license needs to be clear because of the different scope of practice set forth in the new Act. It was also noted by Ms. Blubaugh that if a patient case were reviewed by either the Board of Nursing or Board of Healing Arts, it would need to be clear which license the individual was practicing under at any specific time. Board staff will work further on this regulation draft.
 - c. Staff informed the Council that the draft regulation regarding liability coverage was unnecessary since nurse-midwives are required to participate in the Health Care Stabilization Fund and maintain a minimum level of insurance coverage. This regulation will not be added.
 - d. The Council reviewed the draft regulation regarding scope of practice. Staff noted that the scope is set forth in the new Act. The regulation will just provide clarification. The regulation needs to encompass orders for dietician services, home health services, PT for pelvic rehabilitation, etc. that are sometimes ordered if needed. Questions regarding what constitutes contraception vs. an abortion as defined in K.S.A. 65-6701 were raised. The question of whether delivery of a naturally occurring stillbirth is permitted was also raised. Staff will look into these questions further. The Council noted that certain contraceptive devices are actually permanent and require surgical methods for implantation. The Council agreed those are not within the scope.

- e. The Council reviewed the draft regulation addressing delegation and supervision. It was modeled after the Healing Arts Act statute, K.S.A. 65-28,127. The Council recommended further revisions to blend this language with language in the APRN statutes and regulations.
- f. The Council reviewed the draft regulation regarding the duty to refer or transfer care. The draft was modeled after the birth center regulations and other states' regulations. The Council discussed other options to the requirement for a "written agreement" and noted that not all of the conditions listed were emergency conditions. It was noted that what is considered to not to be "uncomplicated" needs to be specified elsewhere in the regulations. Staff will add the antepartum, intrapartum, postpartum and newborn risk criteria from the ACNM clinical bulletin on home birth services into the regulations.
- g. The Council reviewed the draft regulation regarding documentation and maintenance of medical records. The draft used the 25-year retention period from the birth center regulations. The Council discussed the need to maintain records long enough to address potential liability issues once a child reaches the age of majority and the tolling of the statute of limitations regarding discovery of potential negligence. Sometimes copies of records are provided to pediatricians, but not always. The consensus of the Council was to have a 25-year retention period for all records, except those for family planning services, which will be 10 years.

IV. AGENDA FOR NEXT MEETING

Staff will provide revised drafts of regulations for the next meeting at 2:00 p.m. on August 18th. In the meantime, staff will provide an update on the Council's work to the full Board of Healing Arts at their meeting on August 12th. At the next meeting, the Council will need to refine the drafts for an initial review by the Board of Healing Arts at an anticipated special meeting, and by the Board of Nursing during their next meeting on September 12-14th.

V. ADJOURNMENT

The meeting adjourned at 4:10 p.m.

100-74-1. Definitions. As used in this article, each of the following terms shall have the meaning specified in this regulation:

- (a) “Abortion” has the meaning specified in K.S.A. 65-6701, and amendments thereto.
- (b) “Antepartum” means the stage of care that commences when a pregnant woman presents herself for care during pregnancy and ends at the onset of labor.
- (c) “Birthing center” means a facility which provides delivery services for normal, uncomplicated pregnancies but does not include a medical care facility as defined by K.S.A. 65-425, and amendments thereto.
- (d) “Family planning services” means the provision of contraceptive methods, preconception health services, and sexually transmitted infection screening and treatment to patients.
- (e) “Home birth” means an attended birth in a private residence or a location other than a birth center or hospital.
- (f) “Hospital” has the meaning specified in K.S.A. 65-425, and amendments thereto.
- (g) “Initial care of the normal newborn” means care of the normal newborn during the first 28 days of life.
- (h) “Intrapartum” means the stage of care commencing with the onset of labor and ending after the delivery of the placenta.
- (i) “Licensee” means a certified nurse-midwife licensed by the Board to engage in the independent practice of midwifery as defined in **Sec. 89(c)**.
- (j) “Neonatal” means the stage of care for a newborn commencing with birth and ending on the 28th day of life after birth.

() “Normal newborn” means a newborn infant that has been **determined** to have no complications or be at low risk of developing complications.

() “Normal, uncomplicated delivery” means delivery of a singleton cephalic vaginal birth that has been clinically determined to be at low risk for complications.

() “Normal, uncomplicated pregnancy” means a pregnancy that is initially determined to be at a low risk for a poor pregnancy outcome and that remains at a low risk throughout the pregnancy.

() “Patient” means a woman or newborn infant for which an independent certified nurse-midwife provides clinical services.

() “Poor pregnancy outcome” means any outcome other than a live, healthy patient and newborn.

() “Postpartum” means the stage of care commencing with the delivery of the placenta and ending six weeks after birth.

(Authorized by K.S.A. _____; implementing K.S.A.; effective, T- _____, _____; effective P- _____.)

K.A.R. 100-74-7. Prohibited acts; act not to include certain persons; penalty for violations.

(a) Prior to a licensee, who is licensed under the independent practice of midwifery act, begins care and treatment of any patient, such licensee shall be identified to the patient as an independent certified nurse-midwife. Such licensee shall use the term independent certified nurse-midwife or the abbreviation CNM-I to designate such license.

(b) It shall be unlawful for any person who is not licensed under the independent practice of midwifery act or whose license has been revoked or suspended to engage in the practice as an independent certified nurse-midwife as defined by this act.

(c) It shall be unlawful for any person who is not licensed under the independent practice of midwifery act, and amendments thereto, as an independent certified nurse-midwife or whose license has been suspended or revoked in any manner to represent oneself as an independent certified nurse-midwife or to use in connection with such person's name the words independent certified nurse-midwife or use the abbreviation CNM-I, or any other letters, words, abbreviations or insignia, indicating or implying that such person is an independent certified nurse-midwife.

(d) The provisions of the independent practice of midwifery act shall not be construed to include the following persons:

- (1) Persons rendering gratuitous services in the case of an emergency;
- (2) Individuals practicing religious beliefs which provide for reliance on spiritual means alone for healing;
- (3) Persons whose professional services are performed through a collaborative agreement or by order of a practitioner who is licensed under the healing arts act;

(4) Other health care providers licensed, registered, certified or otherwise credentialed by agencies of the state of Kansas when practicing within the scope of such license, registration, certificate or other credentials; and

(5) Persons whose professional services are performed under the supervision of a licensee who is licensed under the independent practice of midwifery act.

(e) Nothing in this act shall be construed to permit the practice of medicine and surgery. No statute granting authority to licensees of the state board of healing arts shall be construed to confer authority upon licensee to engage in any activity not conferred by **article XX of chapter XX** of the Kansas Statutes Annotated, and amendments thereto. (Authorized by K.S.A. _____; implementing K.S.A.; effective, T-_____, _____; effective P-_____.)

100-74-8. Scope of Practice. (a) A licensee may perform clinical services within the scope of practice set forth in Sec. 89(c), and amendments thereto, including:

- (1) ordering and interpreting laboratory and diagnostic tests;
- (2) prescribing and administering prescription-only medications, including controlled substances;
- (3) distributing manufacturers' samples of prescription-only medications;
- (4) prescribing the use of medical devices;
- (5) ordering ancillary professional services;
- (6) performing an uncomplicated circumcision on a male, normal newborn; and
- (7) insertion and placement of contraceptive devices.

(b) A licensee shall perform clinical services involving labor and delivery in a hospital for the following:

- (1) Pharmacologic induction or augmentation of labor.
- (2) Spinal or epidural anesthesia.

(c) A licensee shall perform clinical services involving labor and delivery in a birth center or hospital for a vaginal birth after previous cesarean delivery.

(d) A licensee shall perform an uncomplicated circumcision on a male, normal newborn in a birth center or hospital.

(Authorized by K.S.A. _____; implementing K.S.A.; effective, T- _____, _____; effective P- _____.)

K.A.R. 100-74-9. Licensees who supervise acts which constitute practice of independent certified nurse-midwife to others; requirements and limitations. (a) The services of a licensee may be

supplemented by the assignment of tasks to an individual licensed by the Kansas Nursing Board or by the delegation of selected nursing tasks or procedures to unlicensed personnel under supervision by the licensee.

(b) Every licensee who supervises acts, which would constitute the independent practice of midwifery, shall:

(1) be actively engaged in the independent practice of midwifery in Kansas;

(2) supervise only those acts and functions which the licensee knows or has reason to believe can be competently performed by such person and is not in violation of any other statute or regulation; and

(3) supervise only those acts and functions which are within the competence and lawful practice of the licensee.

(c) Failure to meet the requirements of this regulation shall constitute unprofessional conduct.

(Authorized by K.S.A. _____; implementing K.S.A.; effective, T- _____, _____; effective P- _____.)

100-74-XX Conversion to practice under license as an advanced practice registered nurse.

During the course of providing clinical services, a licensee may convert to practicing under the authorized scope of practice of the individual's license as an advanced practice registered nurse.

100-74-10. Duty to transfer patient.

(a) A licensee shall have a written protocol in place for each patient for the timely and safe transfer to a prespecified hospital within a reasonable proximity of the location of labor and delivery if **extended/advanced** medical services or emergency services are necessary. Each written protocol shall include:

(1) A plan for transporting a patient by an emergency medical services entity;

(2) a plan for notification of the specified hospital and ongoing communication with the specified hospital about the patient’s medical history and present condition; and

(3) at least one of the following:

- (A) **A plan for patient transfer to the specified hospital;**
- (B) a transfer agreement with the specified hospital; or
- (C) verification that the licensee has admitting privileges at the specified medical care facility.

(b) Each licensee shall ensure that all staff attending any patient’s labor and delivery have immediate access to a working telephone or another communication device and to contact information for transferring a patient or a newborn in case of an emergency.

(Authorized by K.S.A. _____; implementing K.S.A.; effective, T- _____,
_____ ; effective P- _____.

100-74-XX. Duty to refer. (a) A licensee shall immediately refer or transfer care a patient to a **person licensed to practice medicine and surgery** if the patient's medical history or condition presents identifiable risks to the course of pregnancy, labor, delivery, or health of the patient or newborn.

(b) The licensee may resume providing clinical services to the patient if a **person licensed to practice medicine and surgery** has determined that the patient's medical history or condition has been resolved or that any risk factors presented by the patient's medical history or condition are not likely to affect the course of pregnancy, labor, delivery, or health of the patient or newborn.

(c) A licensee shall immediately refer or transfer care of a newborn to a **person licensed to practice medicine and surgery** if the newborn's condition presents identifiable risks to the health of the newborn.

(d) The licensee may resume providing clinical services to the newborn if a **person licensed to practice medicine and surgery** has determined that the newborn's condition has been resolved or that any risk factors presented by the newborn's condition are not likely to affect the health of the newborn.

(Authorized by K.S.A. _____; implementing K.S.A.; effective, T- _____, _____; effective P- _____.)

100-74-11. Patient Records (a) Each licensee of the board shall maintain an adequate record for each patient for whom the licensee performs a professional service.

(b) Each patient record shall meet these requirements:

- (1) Be legible;
- (2) contain only those terms and abbreviations that are or should be comprehensible to similar licensee's;
- (3) contain a signed and dated informed consent form;
- (4) contain identifying information, including the patient's name, address and telephone number;
- (5) indicate the dates any professional service was provided;
- (6) contain documentation of the initial history and physical examination, including laboratory findings and dates;
- (7) contain pertinent and significant information concerning the patient's condition;
- (8) contain all obstetrical risk assessments, including the dates of the assessments;
- (9) reflect what examinations, vital signs, and tests were obtained, performed, or ordered and the findings and results of each;
- (10) indicate the initial diagnosis and the patient's initial reason for seeking the licensee's services;
- (11) indicate the medications prescribed, dispensed, or administered and the quantity and strength of each;
- (12) reflect the treatment performed or recommended;

(13) document the patient's progress during the course of treatment provided by the licensee;

(14) contain documentation of instruction and education related to the childbearing process;

(15) the date and time of the onset of labor;

(16) the course of labor, including all pertinent examinations and findings;

(17) and the exact date and time of birth, the presenting part of the newborn's body, the sex of the newborn, and the Apgar scores;

(18) the time of expulsion and the condition of the placenta;

(19) contain all treatments rendered to the patient and newborn, including prescribing medications and the time, type and dose of eye prophylaxis;

(20) contain documentation of metabolic and any other screening tests completed;

(21) the condition of the patient and newborn, including any complications and action taken;

(22) all medical consultations concerning the patient and the newborn;

(23) all referrals for medical care and transfers to medical care facilities, including the reasons for each referral and transfer;

(24) the results of all examinations of the newborn and of the postpartum patient;

(25) the written instructions given to the patient regarding postpartum care, family planning, care of the newborn, arrangements for metabolic testing, immunizations, and follow-up pediatric care; and

(26) include all patient records received from other health care providers, if those records formed the basis for a treatment decision by the licensee.

(c) Each written prescription ordered by a licensee shall meet the following requirements:

1. contain the name, address, and telephone number of the licensee;
2. be signed by the licensee with the letters "CNM-I" following the signature; and
3. contain any DEA registration number issued to the licensee if a controlled substance is prescribed.

(d) Each entry in the patient record shall be authenticated by the person making the entry unless the entire patient record is maintained in the licensee's own handwriting.

(e) Each entry in the patient record shall clearly identify the licensure of the nurse-midwife as either providing clinical services as an independent certified nurse-midwife, with the letters "CNM-I" to designate the independent practice of midwifery, or as practicing under a collaborative agreement with a licensed physician, pursuant to licensure by the Kansas Board of Nursing.

(f) Each patient record shall include any writing intended to be a final record, but shall not require the maintenance of rough drafts, notes, other writings, or recordings once this information is converted to final form. The final form shall accurately reflect the care and services rendered to the patient.

(g) An electronic patient record shall be deemed a written patient record if the electronic record cannot be altered and if each entry in the electronic record is authenticated by the licensee.

(h) Each licensee shall maintain the patient record for pregnancy, delivery, post-partum and newborn care for a minimum of 25 years from the date the licensee provided the professional service recorded. Any licensee may designate an entity, another licensee, or health care facility to maintain the record if the licensee requires the designee to store the record in a manner that allows lawful access and that maintains confidentiality.

(i) Each licensee shall maintain the patient record for family planning services and treatment of STI's for a minimum of 10 years.

(j) Patient records may be stored by an electronic data system, microfilm, or similar photographic means. A licensee may destroy original paper records stored in this manner if the stored record can be reproduced without alteration from the original.

(k) Each electronically stored record shall identify existing original documents or information not included in that electronically stored record.

(l) Each licensee of the board who terminates the active license within this state shall, within 30 days after terminating the active practice, provide to the board the following information:

(1) The location where patient records are stored;

(2) If the licensee designates an agent to maintain the records, the name, telephone number, and mailing address of the agent;

(3) The date on which the patient records are scheduled to be destroyed, as allowed by K.A.R. 100-24-2. (Authorized by K.S.A. _____; implementing K.S.A.; effective, T- _____, _____; effective P- _____.)