

**K.A.R. 100-28b-19. Unprofessional conduct.** (a) For the purposes of the independent practice of midwifery act and this article of the board’s regulations, “unprofessional conduct” shall mean any of the following:

(1) Soliciting patients through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee;

(2) representing to a patient that a manifestly incurable disease, condition, or injury can be permanently cured;

(3) assisting in the care or treatment of a patient without the consent of the patient or the patient’s legal representatives;

(4) using any letters, words, or terms as an affix, on stationery, or in advertisements, or otherwise indicating that the person is entitled to practice any profession regulated by the board or any other state licensing board or agency for which the person is not licensed;

(5) performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;

(6) willful betrayal of confidential information;

(7) advertising professional superiority or the performance of professional services in a superior manner;

(8) advertising to guarantee any professional service painlessly;

(9) engaging in conduct related to practice as an independent certified nurse-midwife that is likely to deceive, defraud, or harm the public;

(10) making a false or misleading statement regarding the licensee’s skill or the efficacy or value of the drug, treatment, or remedy prescribed by the licensee or at the licensee’s direction

APPROVED

JUL 13 2022

DEPT. OF ADMINISTRATION

APPROVED

AUG 24 2022

ATTORNEY GENERAL

in the treatment of any disease or other condition of the body or mind;

(11) committing any act of sexual abuse, misconduct or other improper sexual contact that exploits the licensee-patient relationship with a patient or a person responsible for health care decisions concerning the patient;

(12) using any false, fraudulent, or deceptive statement in any document connected with the independent practice of midwifery, including the intentional falsifying or fraudulent altering of a patient or medical care facility record;

(13) obtaining any fee by fraud, deceit, or misrepresentation;

(14) failing to transfer patient records to another licensee when requested to do so by the subject patient or by the patient's legally designated representative;

(15) performing unnecessary tests, examinations, or services that have no legitimate medical purpose;

(16) charging an excessive fee for services rendered;

(17) prescribing, dispensing, administering, or distributing a prescription drug or substance, including a controlled substance, in an improper or inappropriate manner, for other than a valid medical purpose, or not in the course of the licensee's professional practice;

(18) repeated failure to practice with that level of care, skill, and treatment that is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances;

(19) failure to keep health care records that accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results, and test results;

(20) delegating professional responsibilities to a person if the licensee knows or has

APPROVED

JUL 05 2022

DEPT. OF ADMINISTRATION

APPROVED

AUG 24 2022

ATTORNEY GENERAL

reason to know that the person is not qualified by training, experience, or licensure to perform these responsibilities;

(21) failing to properly supervise, direct, or delegate acts that constitute the independent practice of midwifery to persons who perform professional services pursuant to the licensee's direction, supervision, order, referral, delegation, or practice protocols;

(22) failing to meet the requirements of K.A.R. 100-28b-11;

(23) willfully or repeatedly violating the independent practice of midwifery act, the pharmacy act of the state of Kansas, or the uniform controlled substances act, or any implementing regulations, or any regulations of the secretary of health and environment;

(24) being found to have unlawfully practiced any profession regulated by the board in which the licensee is not licensed to practice;

(25) violating any lawful order or directive of the board;

(26) being found to be mentally ill, disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect, or incompetent to stand trial by a court of competent jurisdiction;

(27) prescribing, selling, administering, distributing, or giving a controlled substance to any person for other than medically accepted or lawful purposes;

(28) engaging in a practice or conduct that violates a federal law or regulation relating to controlled substances;

(29) engaging in a practice or conduct that violates a federal law or regulation relating to health care records;

(30) failing to furnish the board, or its investigators or representatives, any information

**APPROVED**

**JUL 13 2022**

**DEPT. OF ADMINISTRATION**

**APPROVED**

**AUG 24 2022**

**ATTORNEY GENERAL**

legally requested by the board;

(31) having sanctions or disciplinary actions against the licensee by a peer review committee, a health care facility, a governmental agency or department, or a professional association or society for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under the independent practice of midwifery act;

(32) surrendering a license or authorization to practice nursing in another state or jurisdiction, surrendering the authority to utilize controlled substances issued by any state or federal agency, agreeing to a limitation to or restriction of privileges at any medical care facility, or surrendering the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under the independent practice of midwifery act;

(33) having an adverse judgment, award, or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under the independent practice of midwifery act;

(34) failing to maintain a policy of professional liability insurance as required by K.S.A. 40-3402 or K.S.A. 40-3403a, and amendments thereto;

(35) failing to pay the premium surcharges pursuant to K.S.A. 40-3404, and amendments thereto;

(36) knowingly submitted any misleading, deceptive, untrue, or fraudulent representation on a claim form, bill, or statement;

(37) giving a worthless check or stopping payment on a debit or credit card for fees or moneys legally due to the board;

APPROVED

JUL 13 2022

AUG 24 2022

ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

(38) knowingly or negligently abandoning medical records;

(39) engaging in conduct that violates patient trust and exploits the licensee-patient relationship for personal gain; or

(40) obstructing a board investigation, including engaging in one or more of the following acts:

(A) Falsifying or concealing a material fact;

(B) knowingly making or causing to be made any false or misleading statement or writing; or

(C) any other acts or conduct likely to deceive or defraud the board.

(b) “False advertisement” shall mean any advertisement that is false, misleading, or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of the representations made.

(c) “Advertisement” shall mean any representation disseminated in any manner or by any means, for the purpose of inducing, or likely to induce, directly or indirectly, the purchase of professional services.

(d) Failure to meet any of the requirements of this regulation shall constitute unprofessional conduct. (Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b08; effective P-\_\_\_\_\_.)

**APPROVED**

**AUG 22 2022**

**DEPT. OF ADMINISTRATION**

**APPROVED**

**AUG 24 2022**

**ATTORNEY GENERAL**