

REQUEST FOR TECHNICAL CHANGE

AGENCY: Midwifery Joint Committee

RULE CITATION: 21 NCAC 33 .0101

DEADLINE FOR RECEIPT: Thursday, March 12, 2020

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Given your statutes, is (a) necessary?

Before the definitions (currently (b), would it make sense to say something like "In addition to the definitions set forth in G.S. 90-178.2, the following shall apply to the Rules in this Chapter:"?

Just to verify, is "shall be held accountable", intended to address the supervision requirement set forth in G.S. 90-178.3(b)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Thursday, February 27, 2020

1 21 NCAC 33 .0101 is proposed to be amended as published in NCR 34:12, page 1143, as follows:

2
3 **21 NCAC 33 .0101 ADMINISTRATIVE BODY AND DEFINITIONS**

4 (a) The responsibility for administering the provisions of G.S. 90, Article 10A, shall be assumed by an administrative
5 body, the Midwifery Joint Committee, hereinafter referred to as the "Committee." The certified nurse midwife shall
6 hereinafter be referred to as "midwife."

7 (b) Definitions:

8 (1) "Primary Supervising Physician" means ~~the a physican with an active unencumbered license~~
9 ~~licensed physician with the North Carolina Medical Board~~ who, by signing the ~~certified nurse~~
10 ~~midwife midwife~~ application, shall be held accountable for the on-going supervision, consultation,
11 collaboration, and evaluation of the medical acts performed by the ~~certified nurse midwife, midwife,~~
12 as defined in the site specific written clinical practice guidelines. A physician in a graduate medical
13 education program, whether fully licensed or holding only a resident's training license, shall not be
14 named as a primary supervising physician. A physician in a graduate medical education program
15 who is also practicing in a non-training situation may supervise a ~~certified nurse midwife~~ midwife
16 in the non-training situation if he or she is fully licensed.

17 (2) "Back-up Primary Supervising Physician" means ~~the a physican~~ licensed ~~physician by the North~~
18 Carolina Medical Board who, by signing an agreement with the ~~certified nurse midwife~~ midwife
19 and the primary supervising physician or physicians shall be held accountable for the supervision,
20 consultation, ~~collaboration~~ collaboration, and evaluation of medical acts by the ~~certified nurse~~
21 ~~midwife midwife~~ in accordance with the site specific written clinical practice guidelines when the
22 ~~Primary Supervising Physician~~ primary supervising physician is not available. The signed and dated
23 agreements for each back-up primary supervising physician or physicians shall be maintained at
24 each practice site. A physician in a graduate medical education program, whether fully licensed or
25 holding only a resident's training license, shall not be named as a back-up primary supervising
26 physician. A physician in a graduate medical education program who is also practicing in a non-
27 training situation may be a back-up primary supervising physician to a ~~certified nurse midwife~~
28 midwife in the non-training situation if he or she is fully licensed and has signed an agreement with
29 the ~~certified nurse midwife~~ midwife and the primary supervising physician.

30 (3) "Obstetrics" means a branch of medical science that deals with birth and with its antecedents and
31 sequels, including prenatal, intrapartum, postpartum, ~~newborn,~~ newborn or gynecology, and
32 otherwise unspecified primary health services for women.

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34 *History Note:* Authority G.S. 90-178.4;
35 Eff. February 1, 1984;
36 Amended Eff. July 1, 2000; October 1, 1988;
37 Readopted Eff. November 1, ~~2018.~~ 2018;

REQUEST FOR TECHNICAL CHANGE

AGENCY: Midwifery Joint Committee

RULE CITATION: 21 NCAC 33 .0102

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In (c), why have you changed "lapsed" to "expired"? Is "expired" used throughout your Rules? I note that 90-178.4(b) uses "lapsed."

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Thursday, February 27, 2020

1 21 NCAC 33 .0102 is proposed to be amended as published in NCR 34:12, page 1143, as follows:

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3 **21 NCAC 33 .0102 FEES**

4 (a) The fee for a new application and initial approval shall be one hundred dollars (\$100.00).

5 (b) The fee for annual renewal shall be fifty dollars (\$50.00).

6 (c) The fee for reinstatement for ~~a lapsed~~ an expired approval shall be five dollars (\$5.00).

7

8 *History Note: Authority G.S. 90-178.4(b);*

9 *Eff. February 1, 1984;*

10 *Amended Eff. July 1, 2000;*

11 *Readopted Eff. November 1, ~~2018.~~ 2018.*

12 *Amended Eff. April 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Midwifery Joint Committee

RULE CITATION: 21 NCAC 33 .0103

DEADLINE FOR RECEIPT: Thursday, March 12, 2020

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

In (a)(1) and (b)(1), are the substantive requirements of the application form set forth elsewhere in rule or statute? If not, please provide the substantive requirements.

In (a)(4), please change "license/approval" to "license or approval"

On line 26, change "the above required information" to "the information required in accordance with this Paragraph."

In (a)(5), I assume that this is taken in consideration in accordance with G.S. 93B-8.1?

In (b)(2), what are the requirements of the Certificate Maintenance Program of the American College of Nurse Midwives"? I assume that these are national standards that are not set by you all?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Thursday, February 27, 2020

1 21 NCAC 33 .0103 is proposed to be amended as published in NCR 34:12, pages 1143 – 1144, as follows:

2
3 **21 NCAC 33 .0103 APPLICATION AND ANNUAL RENEWAL**

4 (a) ~~The application to obtain~~ To be eligible for an approval to practice as a midwife is electronically available from
5 ~~the Committee on the North Carolina Board of Nursing website, www.ncbon.com.~~ midwife, an applicant shall:

6 (1) submit a completed application for approval to practice, attesting under oath or affirmation that the
7 information on the application is true and complete, and authorizing the release to the Committee of
8 all information pertaining to the application. Application is posted on the Board of Nursing’s website at
9 www.ncbon.com;

10 (2) ~~The application shall require~~ submit information on the applicant's education, evidence of the applicant's
11 certification by the American College of Nurse Midwives, identification of the physician or physicians
12 who will supervise the applicant, and the sites where the applicant intends to practice midwifery;

13 (3) submit the approval to practice application fee as established in 90-178.4(b)(1);

14 (4) have an unencumbered registered nurse license and midwifery license/approval to practice in all
15 jurisdictions in which a license/approval to practice is or has ever been held;

16 (5) have no pending court conditions as a result of any misdemeanor or felony conviction(s). Applicant shall
17 provide a written explanation and any investigative report or court documents evidencing the
18 circumstances of the crime(s) if requested by the Committee. The Committee may use these documents
19 when determining if an approval to practice should be denied pursuant to G.S. 90-178.6 and 90-171.37;

20 (6) submit a written explanation and all related documents if the midwife has ever been listed as a nurse aide
21 and if there have ever been any substantiated findings pursuant to G.S. 131E-255. The Committee may
22 take these findings into consideration when determining if an approval to practice should be denied
23 pursuant to G.S. 90-178.6. In the event findings are pending, the Committee may withhold taking any
24 action until the investigation is completed; and

25 (7) complete a criminal background check in accordance with G.S. 90-171.48.

26 In the event that any of the above-required information should indicate a concern about the applicant’s
27 qualifications, an applicant may be required to appear in person for an interview with the Committee if the
28 Committee determines in its discretion that more information is needed to evaluate the application.

29 (b) Each midwife shall annually renew their approval to practice with the Committee no later than the last day of
30 the midwife’s birth month by:

31 (1) submitting a completed application for renewal, attesting under oath or affirmation that the information
32 on the application is true and complete, and authorizing the release to the Committee of all information
33 pertaining to the application. Applications are located on the Board of Nursing’s website at
34 www.ncbon.com;

35 (2) attest to having completed the requirements of the Certificate Maintenance Program of the American
36 College of Nurse Midwives, including continuing education requirements, and submit evidence of
37 completion if requested by the Committee as specified in Rule .0111 of this Section;

1 (3) submitting the approval to practice renewal fee as established in G.S. 90-178.4(b)(2).

2

3 *History Note: Authority G.S. 90-178.4(b); 90-178.5;*

4 *Eff. February 1, 1984;*

5 *Amended Eff. March 1, 2017; January 1, 1989;*

6 *Readopted Eff. November 1, ~~2018.~~ 2018.*

7 *Amended Eff. April 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Midwifery Joint Committee

RULE CITATION: 21 NCAC 33 .0105

DEADLINE FOR RECEIPT: Thursday, March 12, 2020

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In reviewing this Rule, the staff recommends that the following technical changes be made:

Given G.S. 90-178.6, is (a) necessary? Is the intent here just to provide the appeal information?

What is the intent of (b)? Is this to say that a midwife is subject to the same discipline as a registered nurse?

I'm a bit confused as to the difference in (c) and (d)? Please review and clarify.

In (c), investigation of what? Investigation of a violation of G.S. 90-178.6? Does this relate to (b)?

In (c), may recommend to whom? Who is making the final decision?

Delete the comma after the "or" at the end of (c)(3).

In (d), a violation of what?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Thursday, February 27, 2020

1 21 NCAC 33 .0105 is proposed to be amended as published in NCR 34:12, pages 1144-1145, as follows:

2
3 **21 NCAC 33 .0105 DUE PROCESS DISCIPLINARY ACTION**

4 (a) Denial, revocation, or suspension of an approval to practice midwifery shall be governed by G.S. 90-178.6 and
5 this Chapter. The applicant aggrieved by a decision of the Committee shall be entitled to a hearing pursuant to the
6 provisions of G.S. 150B, Article 3A.

7 ~~(b) Complaints.~~

8 ~~(1) A complaint regarding a violation of the Midwifery Practice Act or Rules shall be submitted in~~
9 ~~writing and document:~~

10 ~~(A) the name of the certified nurse midwife or other person involved;~~

11 ~~(B) a description of the alleged behavior or incident; and~~

12 ~~(C) the name, mailing address, and phone number of the person filing the complaint.~~

13 ~~(2) The complaint shall be delivered to the Committee administrative office by mail, private carrier,~~
14 ~~facsimile, electronic mail, or in person.~~

15 ~~(c) Action on a Complaint. Action on a complaint shall consist of the following:~~

16 ~~(1) The Committee shall receive and acknowledge complaints, open a file, and initiate complaint~~
17 ~~tracking.~~

18 ~~(2) Complaints shall be screened to determine jurisdiction and the type of response appropriate for the~~
19 ~~complaint.~~

20 ~~(3) Investigation:~~

21 ~~(A) If the facts clearly indicate a Midwifery Practice Act violation, the Committee shall~~
22 ~~commence an investigation.~~

23 ~~(B) A report of each investigation shall be prepared for the Committee's review.~~

24 ~~(4) Formal and Informal Hearings:~~

25 ~~(A) The Committee, after review of an investigative file and upon request by a licensee, shall~~
26 ~~schedule an informal meeting.~~

27 ~~(B) If the matter cannot be resolved informally, then a formal hearing shall be held.~~

28 ~~(C) No Committee member shall participate in more than one of the following steps in the~~
29 ~~enforcement process:~~

30 ~~(i) investigation;~~

31 ~~(ii) informal hearing; or~~

32 ~~(iii) formal hearing.~~

33 ~~(D) Members of the Committee shall not make ex parte communication with parties to a~~
34 ~~hearing.~~

35 ~~(5) Final Orders: No later than 60 days after a hearing, the Committee shall issue its final decision, in~~
36 ~~writing, specifying the date on which it shall take effect. The Committee shall serve one copy of the~~
37 ~~decision on each party to the hearing.~~

1 ~~(6) — Compliance: The Committee Chair shall cause a follow up inquiry to determine that the orders of~~
2 ~~the Committee are being obeyed.~~

3 ~~(d) Disciplinary Sanctions:~~

4 ~~(1) — The following types of disciplinary sanctions may, among others, be used by the Committee when~~
5 ~~a violation of G.S. 90-178.6(a) is found:~~

6 ~~(A) — Letter of reprimand;~~

7 ~~(B) — probation;~~

8 ~~(C) — suspension of approval;~~

9 ~~(D) — nonrenewal of approval;~~

10 ~~(E) — revocation of approval; and~~

11 ~~(F) — injunction.~~

12 ~~(2) — The Committee may request information from professional associations, professional review~~
13 ~~organizations (PROs), hospitals, clinics, or other institutions in which a certified nurse midwife~~
14 ~~performs professional services.~~

15 ~~(3) — The Committee shall provide notice of sanction taken by it to other public entities as necessary to~~
16 ~~ensure that other state Boards and enforcement authorities receive the names of certified nurse~~
17 ~~midwives who have been disciplined.~~

18 (b) The midwife is subject to G.S. 90-171.37; 90-171.48 and 21 NCAC 36 .0217 by virtue of the license to practice
19 as a registered nurse.

20 (c) After an investigation is completed, the Committee may recommend one of the following:

21 (1) — dismiss the case;

22 (2) — issue a private letter of concern;

23 (3) — enter into negotiation for a Consent Order; or,

24 (4) — a disciplinary hearing in accordance with G.S. 150B, Article 3A.

25 (d) Upon a finding of violation, the Committee may utilize the following range of disciplinary sanctions:

26 (1) — Public Letter of Concern

27 (2) — Letter of Reprimand;

28 (3) — Probation;

29 (4) — Suspension of approval;

30 (5) — Nonrenewal of approval;

31 (6) — Revocation of approval; and

32 (7) — Injunction.

33
34 *History Note: Authority G.S. 90-178.6;*
35 *Eff. February 1, 1985;*
36 *Amended Eff. August 1, 2002; October 1, 1988;*
37 *Readopted Eff. November 1, ~~2018~~-2018;*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Midwifery Joint Committee

RULE CITATION: 21 NCAC 33 .0110

DEADLINE FOR RECEIPT: Thursday, March 12, 2020

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In reviewing this Rule, the staff recommends that the following technical changes be made:

In (a)(2), please remove the apostrophe in "MME's"

Please consider deleting "In addition" in (b), (c), and (d).

Please begin (c)(1) through (6) and (d)(1) through (3) with lower-case letters.

Please delete the comma after the "and" at the end of (c)(5).

Please add an "and" or "or" at the end of (d)(2).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: Thursday, February 27, 2020

1 21 NCAC 33 .0110 is proposed to be amended as published in NCR 34:12, pages 1145-1146, as follows:

2
3 **21 NCAC 33 .0110 REPORTING CRITERIA**

4 (a) The Department of Health and Human Services ("Department") may report to the Committee information
5 regarding the prescribing practices of those midwives ("prescribers") whose prescribing:

- 6 (1) falls within the top two percent of those prescribing 100 morphine milligram equivalents ("MME")
7 per patient per day; or
8 (2) falls within the top two of those prescribing 100 MME's per patient per day in combination with any
9 benzodiazepine and who are within the top one percent of all controlled substance prescribers by
10 volume.

11 (b) In addition, the Department may report to the Committee information regarding midwives who have had two or
12 more patient deaths in the preceding 12 months due to opioid poisoning where the prescribers authorized more than
13 30 tablets of an opioid to the decedent and the prescriptions were written within 60 days of the patient deaths.

14 (c) In addition, the Department may report to the Committee information regarding prescribers who meet three or
15 more of the following criteria, if there are a minimum of five patients for each criterion:

- 16 (1) At least 25 percent of the prescriber's patients receiving opioids reside 100 miles or greater from
17 the prescriber's practice location;
18 (2) The prescriber had more than 25 percent of patients receiving the same opioids and benzodiazepine
19 combination;
20 (3) The prescriber had 75 percent of patients receiving opioids self-pay for the prescriptions;
21 (4) The prescriber had 90 percent or more of patients in a three-month period that received an opioid
22 prescription that overlapped with another opioid prescription for at least one week;
23 (5) More than 50 percent of the prescriber's patients received opioid doses of 100 MME or greater per
24 day excluding office based treatment medications; and,
25 (6) The prescriber had at least 25 percent of patients who used three or more pharmacies within a three-
26 month period to obtain opioids regardless of the prescriber.

27 (d) In addition, the Department may report to the Committee information regarding prescribers who authorize a
28 prescription for opioids to at least one patient where the prescribing meets the following criteria:

- 29 (1) The prescription is for 100 MME or greater;
30 (2) The prescription is for 30 or more days;
31 (3) The patient has not had a prescription for an opioid from any prescriber dispensed in the six months
32 prior to the prescription in question.

33 ~~(e)~~(e) The Department may submit these reports to the Committee upon request and may include the information
34 described in G.S. 90-113.73(b).

35 ~~(d)~~(f) The reports and communications between the Department and the Committee shall remain confidential pursuant
36 to G.S. 90-113.74.

1 *History Note: Authority G.S. 90-113.74; 90-178.4;*
2 *Eff. May 1, 2016;*
3 *Amended Eff. December 1, 2017;*
4 *Readopted Eff. November 1, ~~2018~~ 2018;*
5 *Amended Eff. April 1, 2020.*