

## Professional Unsuitability By-Law

<b>Bylaw:</b>	<b>Professional Unsuitability</b>
<b>Application:</b>	Students of the Bachelor of Midwifery Program, College of Nursing
<b>Review Date:</b>	5 years from approval/revised date
<b>Revised (Date):</b>	March 2, 2022
<b>Approved By:</b>	College of Nursing Council: September 25, 2018; Senate: January 9, 2019  College of Nursing Council Revised: January 27, 2022; Senate March 2, 2022

The College of Nursing, within the Faculty of Health Sciences at the University of Manitoba has established a Bachelor of Midwifery Program (the “Program”). The purpose of this Bachelor of Midwifery Program By-law is to set out the jurisdiction of the Program’s Unsuitability Committee and to set out the Program’s procedures for professional unsuitability hearings.

### 1.0 Jurisdiction

#### 1.01 General

The Program may require a student to withdraw from all Program courses pursuant to the procedures set out in this By-Law if the student has been found unsuited, on consideration of competence or professional fitness, for the practice of midwifery. Upon a finding of professional unsuitability, the Program may require a student to withdraw from Program courses at any time throughout the academic year or following the results of examinations at the end of any academic term.

The Program’s right to require withdrawal prevails notwithstanding any other

provision in the Program's Rules or Regulations. The Code of Ethics for Midwives in Manitoba and the International Code of Ethics for Midwives, as the ethical basis for midwifery in Manitoba, will be considered in every situation in which an inquiry is being held pursuant to this By-law into the conduct of a student in the practice of midwifery. Furthermore, in accordance with provisions of the Manitoba Human Rights Code, the Program's duty to reasonably accommodate the special needs of its students will be considered.

### **1.02 Grounds for required withdrawal**

A student may be required to withdraw from the Program if the PUC has determined the student has:

- been guilty of conduct which, if participated in by a practicing registered midwife would result in suspension, expulsion or other serious disciplinary action of a practitioner from the practice of midwifery by the regulatory body of the profession;
- practiced incompetently in any clinical setting;
- jeopardized professional judgment through self-interest or a conflict of interest;
- demonstrated behaviour with respect to other students, colleagues, faculty or the public which is exploitative, irresponsible or destructive;
- acquired a criminal conviction which according to the Program was determined to be of such a nature as to bring disrepute to the profession, or by which in the opinion of the Program, the student demonstrated poor judgment, lack of integrity or other unsuitability for the profession;
- exhibited a health condition, the occurrence of which impairs essential performance required for the midwifery profession;
- practiced or provided client care while impaired, including being under the influence of alcohol or drugs while participating in client care, a professional activity, or any activity related to the practice of the midwifery profession;
- demonstrated unethical behaviour as specified by College of Midwives of Manitoba and the International Confederation of Midwives.

### **2.00 Professional Unsuitability Committee (PUC)**

**2.01** There shall be established within the Program a standing committee known as the Professional Unsuitability Committee (PUC) to hear and determine matters of competence or professional fitness for the practice of midwifery. Appeals from decisions of the Programs' PUC shall be heard by the University's

Senate Committee on Appeals.

**2.02** Membership in the PUC shall be as follows:

Chair (non-voting, except in the case of tie): tenured faculty member or instructor to be appointed by the Dean of the University's College of Nursing for a five (5) year term, which may be renewable.

Committee Members:

- two (2) registered midwives who are academic members of the Program, elected by the Council of the College of Nursing, for a five (5) year term, which may be renewable;
- one (1) student from the UM Bachelor of Midwifery Program, preferably from Year 3 or 4; appointed for a one (1) year term, which may be renewable;
- and
- one registered nurse who is a full-time academic member of the University's College of Nursing with knowledge of the professional requirements of the Program.

**2.03 Selection of Student Representative**

The University's College of Nursing will advise undergraduate midwifery students via individual email requesting nominations for the student positions. Students will vote via a confidential web-based program, selecting their preferred candidates from a list of nominees.

**3.00 Procedure**

**3.01** Upon receipt of information that supports a hearing to assess a student's suitability for the profession of midwifery, the Dean or Associate Dean of the University's College of Nursing (or appropriate designate) shall:

i) provide a written report to the PUC requesting the PUC hold a hearing to assess the student's suitability for the profession of midwifery. This report should include the alleged facts and the alleged ground(s) warranting withdrawal pursuant to Article 1.02. In no circumstances will the Dean's report include anonymous allegations or materials. Anonymous materials are defined as "authorship that has not been disclosed".

**3.02** Upon receipt of a request for a hearing into a student's suitability for the profession of midwifery, the PUC shall:

i) review the request and determine whether it has jurisdiction to proceed;

- ii) schedule a hearing date if jurisdiction exists. The hearing date must be at least five (5) days from the date the student received the written report and request for the hearing;
- iii) formally send a Notice of Hearing, including a copy of the written report submitted to PUC, to the named student pursuant to Article 4.01 by registered mail to the last known address of the student as found on the Program's records. At the student's request, additional information may be sent by regular mail, email or facsimile;
- iv) consider whether just cause exists to suspend the student while the matter is being determined and if so, to issue an interim suspension to the student;
- v) act expeditiously to complete the hearing process;

**3.03** Once a request for a hearing has been made to the PUC, the hearing may continue notwithstanding that the student has subsequently voluntarily withdrawn from the Program, or has refused to participate in the proceedings.

#### **4.00 Notice to Students**

**4.01** The Chair of the PUC shall inform the student in writing, within five (5) working days of receipt of the request for a hearing, of the grounds for referral to the PUC, as well as the membership of the PUC and the date, time, and place for the hearing by the PUC of the matters set out in the referral.

**4.02** The Notice from the Chair shall include a statement that if the allegations contained in the request for a hearing are established to the satisfaction of the PUC the student may be required to withdraw from the Program.

**4.03** An academic member of the Program shall not be disqualified from sitting as a member of the PUC hearing the matter by reason only that such academic member has had previous contact with the student or has prior personal knowledge of the matter.

**4.04** The student whose case is to be dealt with shall be permitted to challenge and thereby cause to be disqualified any member of the PUC. In such a case, the Chair would consider the grounds for the challenge and may replace the disqualified members pursuant to section 2.02.

#### **5.00 Hearing Procedures**

**5.01** In addition to the written report, the Dean or Associate Dean may provide the PUC and student with additional relevant information and or evidence that

supports the grounds for a hearing within six (6) working days of the hearing date, or at the discretion of the Chair.

- 5.02** The student may provide a written response to the grounds. Such written response should be provided to the PUC within five (5) working days of the hearing date, or at the discretion of the Chair.
- 5.03** The student may appear in person and may choose to be represented by a Student Advocate provided through the University, legal or other counsel. A student may request an additional support person who may accompany him/her to the hearing. This person will be considered an observer and will not be able to participate in the hearing process.
- 5.04** The Program and student may call relevant witnesses as needed. Written notice to each party of witnesses to be called by the other party shall be provided at least five (5) working days prior to the hearing date, or at the discretion of the Chair.
- 5.05** The hearing shall be closed to all persons except the members of the PUC, Program representative, the student, the designated representative of the student, if any, and support person of the student, if any.
- 5.06** The student or her/his representative shall have the right to hear and to cross examine witnesses, to have access to copies of all documents submitted to the PUC for consideration at least five (5) working days prior to the hearing, to call witnesses and to submit other evidence.
- 5.07** The student shall not be required to give evidence but if the student elects to do so, then the student may be questioned by members of the PUC.
- 5.08** A quorum for the PUC shall be 4 members and the Chair as referred to in section 2.01 above, 1 of whom shall be a Registered Midwife holding an academic position.
- 5.09** A simple majority of the members hearing the matter is required for any finding or for the determination of the appropriate disposition of the matter.
- 5.10** The Chair of the PUC shall vote only to break a tie.
- 5.11** Members of the PUC shall be bound by confidentiality in respect of information received in Committee. Information will only be disclosed as is reasonably necessary to implement the investigation, the resolution or the terms of any disposition imposed, or as required by law.
- 5.12** The results of the hearing and the reasons therefore shall be conveyed in

writing to the student, the Student Advocate, and/or the designated representative of the student where applicable, with copies to the University's Dean of the College of Nursing, the Associate Dean, Undergraduate Programs and the Director of the Bachelor of Midwifery Program.

**5.13 Distance Hearings**

At the discretion of the Chair, hearings may be conducted in whole or in part via teleconference or other video/electronic means.

**5.14** If the student is participating in a hearing via teleconference, the Chair may require the student to confirm that there are no recording devices present and only persons set out in Article 5.03 are in attendance.

**6.00 Disposition of the Matter**

**6.01** The PUC shall, after hearing all the evidence, meet in closed session with its members only, to:

- i) consider the evidence;
- ii) make its findings using a balance of probabilities standard;
- iii) if the allegations are proven, determine the appropriate disposition of the matter;
- iv) if the allegations are not proven, dismiss the matter and/or make any other recommendation the PUC deems appropriate.

**6.02** The PUC may make any disposition it deems appropriate in the circumstances. Without limiting the generality of the foregoing the following options, alone or in combination, are available:

- i) determine that no further action be taken;
- ii) allow the student to remain in the program and attach conditions prescribing future conduct by the student. Such conditions to remain in effect for any period of time the PUC deems appropriate;
- iii) reprimand the student in writing;
- iv) suspend the student from the Program for a specified period of time;
- v) require the student to withdraw from the College indefinitely;
- vi) attach conditions which must be fulfilled before any application for re-admission to the College can be considered;
- vii) expel the student from the Faculty with no right to apply for re-admission to the College.

**6.03** In cases in which the disposition of the hearing is one of iv, v, vi, or vii as set out in 6.02, the results shall be conveyed in writing to the Registrar, College of Nursing who shall make the appropriate notation in the student's transcript.

**6.04** The student may request the PUC to consider removal of the notation from the transcript.

**7.00 Appeals**

**7.01** If the student wishes to appeal a disposition of the PUC, such appeal may be made to the University's Senate Appeals Committee in accordance with the procedures of that body.

**7.02** In the event of an appeal, the implementation of any decision of the PUC may be suspended until the matter has been disposed of by the Senate Appeals Committee.

Notwithstanding the above and in addition to Article 7.04, if the President of the University is satisfied that it is in the best interests of the University, the President may at any time make an order, subject to final disposition of the appropriate review authority, suspending the student from participating in any program of the University.

**8.00 Records**

**8.01** A record of any finding of professional unsuitability and/or disposition related thereto shall be kept on the student's academic file within the Program and as required by the University. All information relating to the hearing before the PUC shall be kept in the office of the Associate Dean of the Undergraduate Programs at the University's College of Nursing.

**9.00 Amendments**

**9.01** This By-Law may be amended by the University's Senate, or by Senate after approval of such amendment(s) by College Council.

**Observations:**

- The proposed policy is consistent with the policy for students in the Bachelor of Nursing Program at UM. The proposed policy ensures that the College of Nursing (UM) obligation to protect the public is fulfilled.

Revised: Approved by College Council, Jan 27, 2022