



# COMPLAINT PROCESS

Midwifery Program

DOH 679-157 April 2019

# Agenda

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- Big Picture
- Authorization
- Investigation
- Timelines
- Enforcement

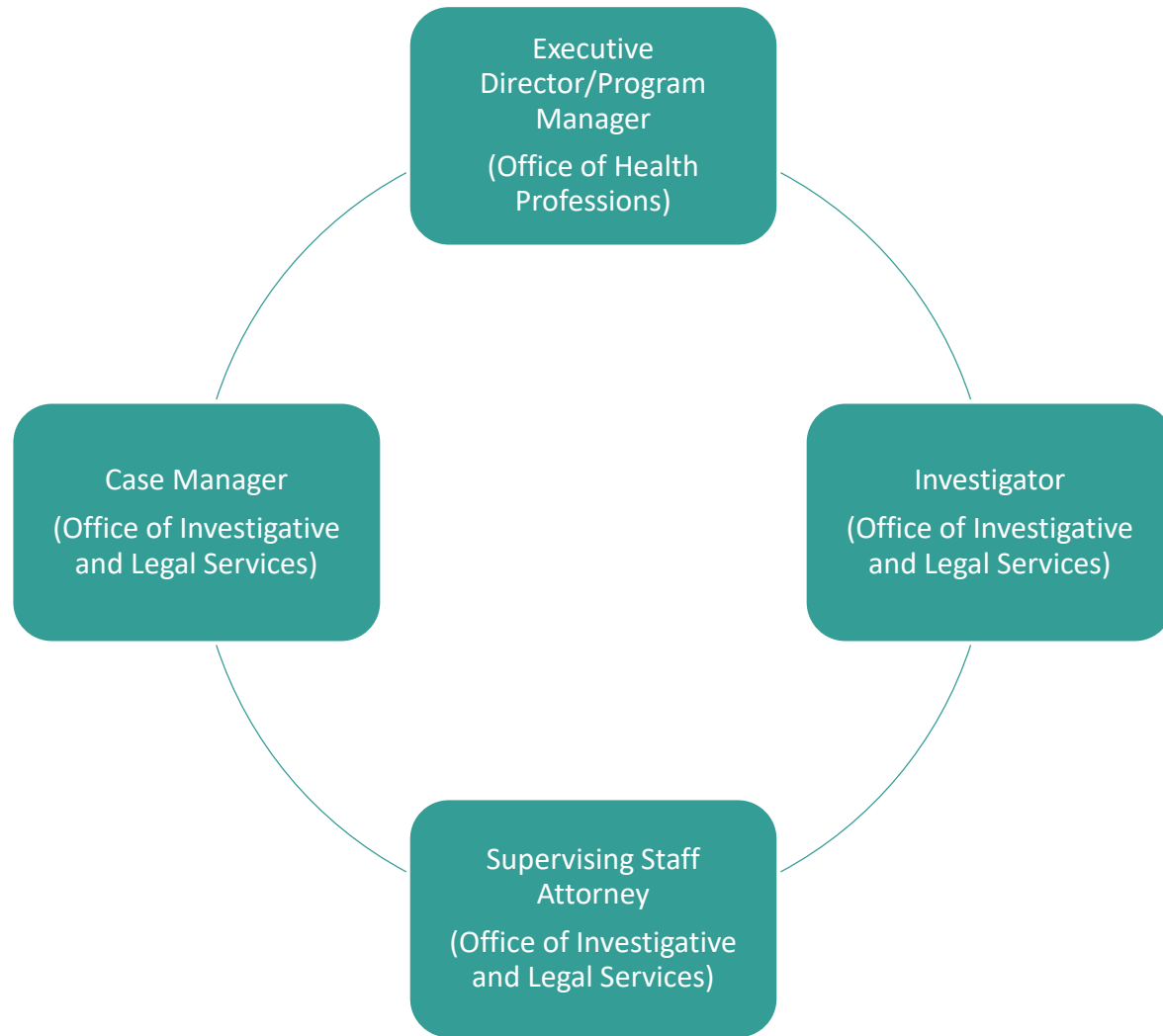
# BIG PICTURE



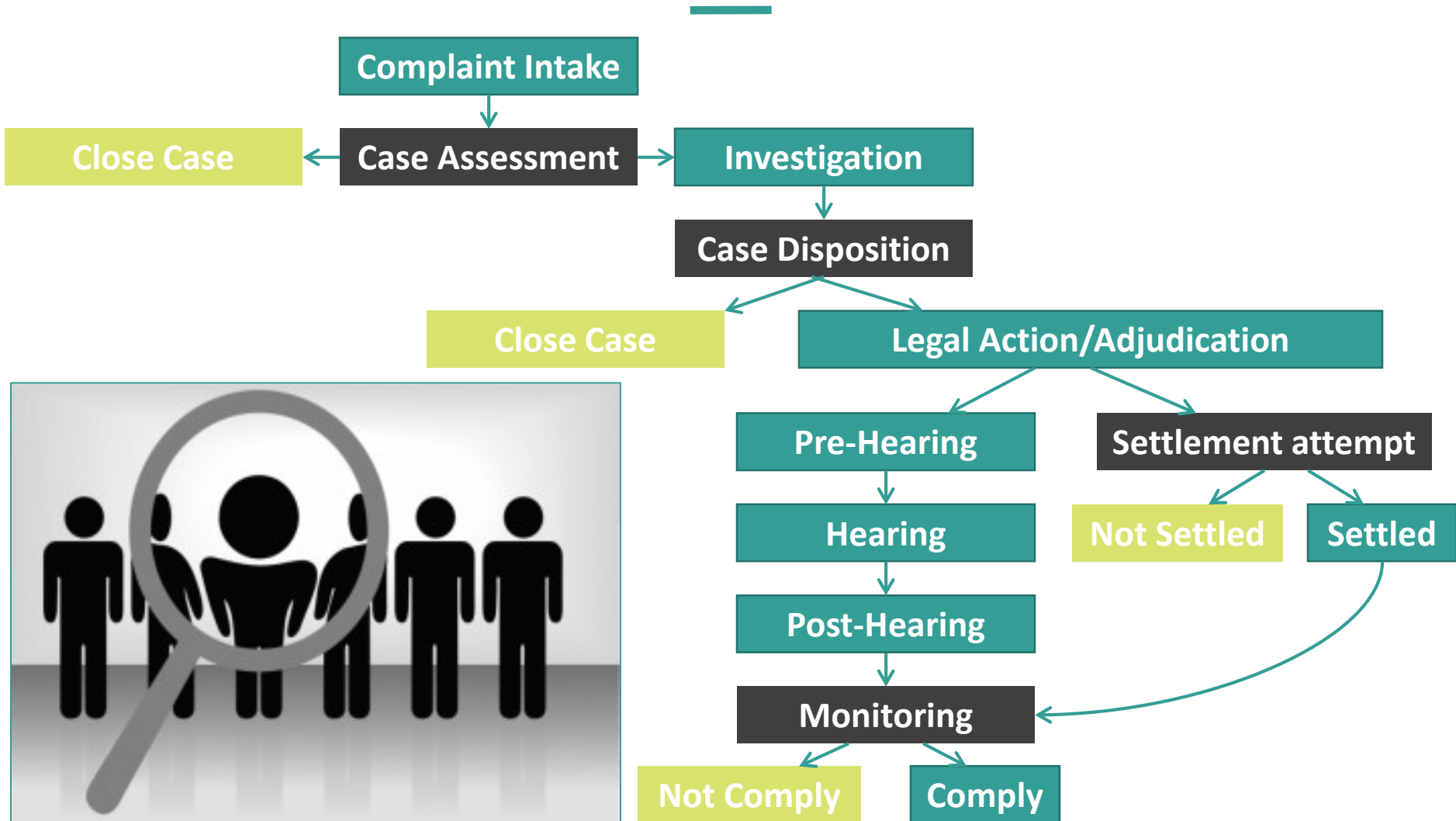
# Case Management Team

- According to [RCW 18.130.040](#) Midwifery is a secretary profession – discipline is handled by a case management team (CMT)

# Disciplining Authority Actors Of the Case Management Team



# Disciplinary Process



# AUTHORIZATION



# Reports

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- Reports come from a variety of sources (e.g. patients, other healthcare professionals, insurance companies, facilities, national associations, data bank reports, criminal background checks).
- Anonymous and phone reports pose unique challenges but are investigated based on nature of the allegation and supporting evidence.

\*While we use the term “complaint” freely, technically, notice of alleged unprofessional conduct does not become a “complaint” until and unless the disciplining authority chooses to investigate it. Until then, the matter is a “report.” RCW 18.130.095(1)(a).



# Assessing Reports

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- Look at the 4 corners of the report
  - Don't assume things
  - Don't conduct outside research
- **First**, on the face of the report, is there a violation?
  - If no, close the report.
- **Second**, if yes, does the violation rise to the level of warranting an investigation?
  - Severity of the violation
  - Risk to the public health and safety
  - What sanctions are available that serve to protect the public and if possible, rehabilitate the licensee?

# Case Priority

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Priority Code	Priority Description	Reason (These are just examples and this list is not meant to be exhaustive. Each case must be assessed on the facts and information presented.)
Priority A	Imminent Danger or risk of immediate danger	Possible summary action involving death, serious injury, sexual misconduct, abuse, diversion, substance abuse, prohibition in another state, prohibition from unsupervised access to vulnerable adults
Priority B	Serious risk	Death, serious injury, sexual misconduct, abuse, pattern indicating gross incompetence, diversion, substance abuse
Priority C	Moderate risk	Standard of care
Priority D	Minor risk	No patient harm
Priority E	Technical or Questionable violation(s)	Credential application, default student loan, failure to pay child support, failure to complete CEs

# INVESTIGATION



# Referral for Investigation

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- Once case is authorized by the CMT, case is forwarded to the Office of Investigative and Legal Services (OILS)
- Case is reviewed by the supervising investigator
  - Ensure no jurisdiction issues
  - Ensure proper authorization



# Assignment of Cases & Investigation Plan

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- Supervising investigator assigns cases
- Investigator determines the investigation plan
  - Discusses with supervisor as needed
  - May utilize a licensed midwife or midwifery member of the midwifery advisory committee, as needed
- Investigators gather evidence
- Investigators are not decision makers
- Midwifery Advisory Committee members are also not decision makers

# Whistleblower Waiver

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- Whistleblower protection bars the disclosure of a complainant's identity. (RCW 43.70.075; Chapter 246-15 WAC)
- In order to effectively investigate a complaint, OILS asks for a release from the complainant.
- If the complainant will not sign a release, the case is evaluated to determine if an effective investigation is possible without identifying the complainant.

# Finished Investigation

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- Once the investigation is completed, the investigator provides the file to the case manager for review and presentation to CMT members.



# TIMELINES





# Uniform Procedures for Complaint Resolution

## Chapter 246-14 WAC

- Initial Assessment – 21 days
  - WAC 246-14-040
- Investigation of Complaints – 170 days
  - WAC 246-14-050
- Case Disposition – 140 days
  - WAC 246-14-060
- Adjudication of SOCs – 180 days
  - WAC 246-14-090

# Timeframe for Attorney General's Office

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- Conduct based summary suspension cases – 10 days
- Mandatory summary suspension cases – 20 days
- Traditional cases – 30 days



# ENFORCEMENT



# Who are all these attorneys?

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- Legal Advisor: Agriculture and Health Division of the Attorney General's Office (AGO)
- Prosecuting Attorneys:
  - Agriculture and Health Division of the AGO for Secretary Professions
  - Government Compliance and Enforcement Division of the AGO for Board/Commission Professions
- Staff Attorneys: Department of Health, Office of Investigative and Legal Services

# Laws and Rules for Professions

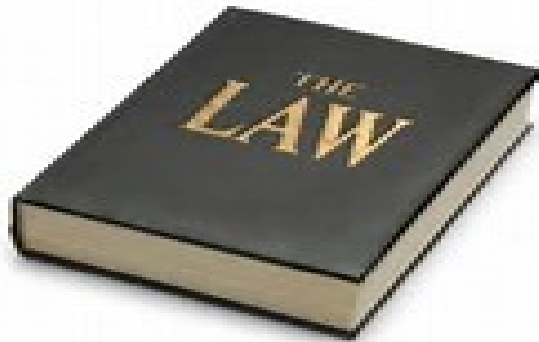
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- Each profession has an enabling statute that empowers the Secretary (or Board/Commission) to regulate that profession.
- Each profession has a practice act that defines the profession and requires a person to obtain a license to practice that profession.
- Each profession has rules that further define and help regulate what licensees can do.
- Uniform Disciplinary Act (Chapter 18.130 RCW)

# Midwifery Laws and Rules

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- Chapter [18.50 RCW](#)
- Chapter [246-834 WAC](#)



# Uniform Disciplinary Act

RCW 18.130.180

- Engage in an act involving moral turpitude, dishonesty, or corruption (§1)
- Misrepresentation to obtain a license (§2)
- Incompetence, negligence, or malpractice that results in injury or creates unreasonable risk of harm (§4)



Note: § stands for the sub-section number within in the WAC

# Uniform Disciplinary Act

RCW 18.130.180

- Suspension or restriction of license in another jurisdiction (§5; RCW 18.130.370)
- Possession, use, prescription for use or distribution of controlled substances or legend drugs other than for legitimate purpose, diversion, violation of any drug law, or prescribing for oneself (§6)
- Violation of any RCW or WAC regulating the profession (§7)



# Uniform Disciplinary Act

RCW 18.130.180

- Failure to cooperate with the disciplining authority (§8)
- Failure to comply with an order issued by the disciplining authority (§9)
- Practice beyond the scope (§12)
- Failure to adequately supervise auxiliary staff (§14)



# Uniform Disciplinary Act

RCW 18.130.180

- Conviction of gross misdemeanor or felony (§17)
- Misuse of alcohol or drugs (§23)
- Abuse or sexual contact with client or patient (§24; Chapter 246-860 WAC)



# Due Process

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- CMT must authorize initiation of investigation and initiation of legal action
- Quasi-Criminal
  - CMT must authorize and define the scope of investigation (*Yoshinaka v. State*)
  - Constitutional protections for unreasonable searches (*Seymour v. State*)
  - Complaint must indicate merit of possible UDA violation

# Legal Action

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- Notice of Decision ([RCW 18.130.055](#))
  - Deny or grant credential with conditions
  - Burden on applicant
  - Notice of Required Examination prior to NOD
- Statement of Allegations ([RCW 18.130.172](#))
  - Not a finding of unprofessional conduct
  - Respondent must acknowledge if allegations proven it would be unprofessional conduct
  - Reported to the National Practitioner Databank

# Legal Action

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- Statement of Charges ([RCW 18.130.090](#))
  - Public notice
  - Request hearing within 20 days or default
  - Formal hearing process
- Summary action ([RCW 34.05.422](#); [RCW 34.05.479](#); [RCW 18.130.050\(8\)](#))
  - Existence of immediate danger to public health, safety, or welfare
  - Summary action addresses danger
  - Only take such action as is necessary to address danger



# Other Legal Action


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- Notice of mental or physical examination ([RCW 18.130.170](#))
- Reinstatement ([RCW 18.130.150](#))



# Sanctions

- Sanction schedules identify the severity & duration of sanction (WAC 246-16-800 to 890)

<b>PRACTICE BELOW STANDARD OF CARE</b>				
Severity	Tier / Conduct	Sanction Range In consideration of Aggravating & Mitigating Circumstances		Duration
		Minimum	Maximum	
least  greatest	<b>A – Caused no or minimal patient harm or a risk of minimal patient harm</b>	Conditions that may include reprimand, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 3 years which may include reprimand, training, monitoring, supervision, evaluation, probation, suspension, etc.	0-3 years
	<b>B – Caused moderate patient harm or risk of moderate to severe patient harm</b>	Oversight for 2 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc.	Oversight for 5 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. OR revocation.	2 years - 5 years unless revocation
	<b>C – Caused severe harm or death to a human patient</b>	Oversight for 3 years which may include suspension, probation, practice restrictions, training, monitoring, supervision, probation, evaluation, etc. In addition - demonstration of knowledge or competency.	Permanent conditions, restrictions or revocation.	3 years - permanent

# Sanctions

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- Sanction can include:
  - Suspension
  - Probation with conditions
  - Practice restrictions
  - Remedial education or treatment
  - Cost recovery (STID) or fine (Agreed Order)
- Must use a Statement of Charges/Agreed Order for revocation, suspension, censure or reprimand, or fine

See RCW 18.130.160



# Sanctions

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Things to consider before authorizing disciplinary action:

- To proceed with SOA/STID, there should be a strong enough case to proceed with formal action.
- What are the mitigating and aggravating factors (e.g. length in practice, minor technical violation, abuse of trust, injury caused)?

