



April 20, 2010

Senator Thomas Duane
New York State Senate
430 State Capitol Building
Albany, NY 12247

Re: Support for Senate Bill 5007

Dear Senator Duane:

I am writing on behalf of the American College of Nurse-Midwives (ACNM) in strong support of S. 5007, *The Midwifery Modernization Act*. The bill eliminates a substantial barrier to midwifery practice by striking the requirement that licensed midwives first procure a signed written practice agreement with a physician in order to practice midwifery. Enactment of S. 5007 would ensure seamless access to care for women and their families while protecting physicians working with midwives from undue exposure to liability.

ACNM is the national organization representing the interests of certified nurse-midwife (CNM®) and certified midwife (CM®) practitioners. New York law uses the term “midwife” to encompass CNMs and CMs who are eligible for licensure in the state. Highly skilled providers of health care services for women and their families, CNMs and CMs have completed extensive education, training, credentialing and certification. New York’s laws need to be updated to align with current standards of CNM/CM practice.

CNMs/CMs are primary care providers who are trained to work independently and, as needed, consultatively with OB/GYNs and other physicians. When interdependence is needed, it takes place along a well-defined spectrum of interaction so that midwives are able to freely consult with physicians on matters that are beyond their scope of practice, and to co-manage or transfer care, if appropriate.

Midwifery practice is defined as the independent management of women's health care, focusing particularly on common primary care issues, family planning and gynecologic needs of women, pregnancy, childbirth, the postpartum period and care of the newborn. It is important to note that *independent* should not be interpreted to mean *alone*, as there are clinical situations when any prudent practitioner would seek the assistance of another qualified practitioner.

There is no justification to require midwives to have any signed written agreement with physicians in order to practice midwifery. Physicians do not need to execute signed written agreements with specialists to whom they refer patients. ACNM’s *Standards for the Practice of Midwifery* already obligate CNMs and CMs to practice in accordance with written practice guidelines addressing the parameters of service for independent and collaborative midwifery care management.

Current New York law is profoundly misguided as it has the potential to place liability on the collaborating physician for the midwife’s actions or omissions, as well as for the physician’s own related actions or omissions, a primary reason some physicians have been reluctant to sign collaborative agreements. ACNM believes strongly that midwives and physicians should work within their scope of

practice and be held independently accountable. Moreover, midwives practicing in states that do not require collaborative agreements face no higher professional liability premiums than those practicing in states that do require them; in other words, the existence of a collaborative agreement requirement in state law has no bearing on premium cost.

A clear acknowledgment of the importance of independent accountability can be found in a recent decision from the highest court of the District of Columbia, *Gilbert v. Miodovnik*. In March of this year, the DC Court of Appeals affirmed that DC's midwifery laws (which do **not** require a collaborative practice agreement) are properly interpreted to create separate streams of potential liability so that physicians are not held responsible for midwifery patient care or consultation. The Court noted that under DC law midwives are independent practitioners fully qualified to act, and that the physician and midwife related to one another as peers; the result was that the physician was properly shielded from both direct and vicarious liability. ACNM is so committed to making sure that midwives and physicians with whom they may consult bear independent decision-making responsibility that we participated in an *amicus curiae* brief in the case. The Court affirmed that public policy is best served by encouraging open consultative and collaborative relationships among midwives and physicians; to find physicians responsible for midwifery practice would provide a strong disincentive for physicians and midwives to consult when needed.

In New York, the existence of the collaborative agreement requirement could result in an imputation of liability to a physician engaging in nothing more than a routine consult; even failing to consult could be deemed to constitute an omission leading to physician liability. ACNM has helped defend physicians in states with collaborative agreement laws similar to New York's who have been sued under the theory that the collaborative agreement creates a *de facto* supervisory relationship; the elimination of collaborative agreement requirements would serve to protect midwives, doctors and health care consumers alike.

Approval of this bill is vitally important for CNMs and CMs to be able to practice in New York to the full extent of their training, and for other newly minted graduates as well as established practitioners in other states to be drawn to relocate to the state. New York legislators can play an important role in improving health outcomes, quality care, and resource utilization by addressing such barriers to evidence-based maternity and women's health care.

Midwives have historically cared for those populations most at risk for health disparities. In this day and age when there are growing shortages of health care practitioners who can provide primary care services to women and their families, particularly in rural areas, New York—which has been a leader on so many important legislative issues—cannot afford to continue to allow outmoded, patently unnecessary restrictions to impede the practice of licensed midwives.

Sincerely,



Joanna M. King, Esq.
Director, Government Relations