MIDWIVES ADVISORY COMMITTEE
Professional & Vocational Licensing Division
Department of Commerce & Consumer Affairs
State of Hawaii

MINUTES OF MIDWIVES ADVISORY COMMITTEE MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor as required by section 92-7(b), Hawaii Revised Statutes.

Date: Monday, January 29, 2024

Time: 9:00 a.m.

In-Person Meeting Location: Queen Liliuokalani Conference Room
HRH King Kalakaua Building, 1st Floor
335 Merchant Street
Honolulu, Hawaii 96813

Virtual: Virtual Videoconference Meeting – Zoom Webinar (use link below)
https://dcca-hawaii-gov.zoom.us/j/81156475160

Zoom Phone Number: (669) 900 6833
Meeting ID: 811 5647 5160

Zoom Recording Link: https://youtu.be/TEy57JsI96g

Virtual Meeting Instructions: Sheena Kristie Duarte provided information on internet and phone access for today's virtual meeting and a short video regarding virtual meetings was played for attendees.

For purposes of this virtual meeting, the EO will take roll call of the Committee members to establish quorum and for motions that require a vote of the Committee members.

Members Present: Lea T. Minton, CNM
Sheena Kristie Duarte, Public Member
Leah Hatcher, CPM
Rachel Lea Curnel Struempf, CPM
Pua O Eleili Pinto, Public Member
Whitney Herrelson, CPM

Staff Present: Lee Ann Teshima, Executive Officer ("EO Teshima")
Alexander Pang, Executive Officer ("EO Pang")
Randy Ho, Executive Officer ("EO Ho")
Shari Wong, Deputy Attorney General ("DAG Wong")

Marc Yoshimura, Secretary

Attendees: Daniela Martinez
Kiana Rowley, Pacific Birth Collective
Mieko Aoki
Ki'inaniokalani Kaho'ohanohano
Margaret Ragen, CM, LM
Amber Ward
Lynn Velasquez
Yvonne Yoro
Rep. Natalia Hussey-Burdick
C Kimhan
Kari'
Jerry Rice
Jacquelyn
Laura Acasio
Amy's OtterPilot
Rep Cochran
Mariah's iPhone
Laulani Teale
Sunny Chen, Healthy Mothers Healthy Babies Hawaii
A. Ezinne Dawson, CPM, LM
Mieko
Tabby Molapo
Melissa Danielle
Jacce Mikulanec
John G
jmelee lewis
Pahnelopi McKenzie
Piper Lovermore

Call to Order: The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by section 92-7(b), Hawaii Revised Statutes ("HRS").

EO Teshima noted that at the prior Committee meeting, Sky Connelly resigned from her position as a member of the Committee. EO Teshima further noted that the Director of the Department of Commerce and Consumer Affairs appointed Whitney Herrelson as a member of the Committee. Ms. Herrelson is a certified professional midwife from Maui County. EO Teshima noted the desire to have all the counties represented on the Committee if possible.

EO Teshima took roll call and asked the Committee members if they were alone in a non-public location. The meeting was called to order at 9:11 a.m.

Approval of October 30, 2023 EO Teshima asked if the Committee had any corrections, questions, or discussion on the October 30, 2023 Committee meeting minutes. Ms. Minton said that she

Meeting Minutes: reviewed the minutes and they looked good to her. EO Teshima asked for a motion to approve the minutes. Ms. Struempf moved to approve the minutes. Ms. Duarte seconded. EO Teshima asked for any nays, abstentions, or recusals. Seeing none, the October 30, 2023 Committee Meeting Minutes were approved as circulated.

EO's Report: **2024 Legislative Session**

EO Teshima referenced HB 1698, Relating to Home Births, and said that this is a short form bill with nothing to discuss.

EO Teshima then referenced SB 2969, Relating to Access for Reproductive Care, and provided this description of the bill: "Clarifies the State's midwifery law to permit care by extended family, cultural supporters, or others with whom a woman chooses to give birth. Specifies that nothing in the midwifery law shall prohibit or restrict healing practices by traditional healers of any ethnic culture or religious faith or their students; limit, alter, or adversely impact any religion or ethnic cultural practices; or prohibit or interfere with a person's right to choose where and with whom the person gives birth."

Ms. Duarte noted that the companion bill to SB 2969 is HB 2649. She stated that something very important to note is the Attorney General letter, shared recently, providing clarification on those who do need a license to be able to continue to provide the care that they do. Ms. Duarte said that unless the statute was fixed using this bill as a means to fix the issue that the Attorney General brought to their attention, the majority providing collaborative care, including licensed midwives, are criminalized by the midwifery definition. This would take away a whole community, such as doulas, lactation consultants, childbirth educators, birth attendants, grandparents, with or without compensation, all of whom could be addressed using this bill.

Ms. Duarte said that it is clear by the language in the preamble of 2019 SB 1033 that the Legislature intended to "enact statutes that will incorporate all birth practitioners and allow them to practice to the fullest extent under the law." That has still not happened. Every year, members of the task force have said something. Every year, we have had a bill. Why hasn't it passed? Task force recommendations were made to the Legislature to (1) incorporate all birth practitioners and (2) continue to meet until June 30, 2020 – another six months to collaborate with the community. These recommendations were introduced in SB 2428 by the CPH chair in 2020. So what happened? Well, the chair deferred and explained, "I have made a commitment that when the other bill passed, and we got the report back from the auditor, that I was going to hear the bill whether I agreed with the auditor recommendations or not. And I needed to stay true to that." Then, in 2022, the same senator deferred again: "Chair has a lot of experience with this issue and recommends that we defer indefinitely. It's just never going to

be any happier medium than one currently in the statute, in Chair's opinion." So in closing, even though the former senator may have been unaware at the time of the AG's clarification on HRS 457J, we, the Committee, are all now aware. This is not a happy medium, and we cannot continue to look away from this issue. Ms. Duarte said that she supports SB 2969 and HB 2649, and that if amendments can be made to them to incorporate practitioners, not just leaving it as printed, that would be a positive State thing to do for the community.

Ms. Struempf said that she supports the bill being passed to clarify because there is a lot of misunderstanding around what lactation consultants, childbirth educators, and doulas do and the service they provide to the community. It was very much confused in the original bill, and really an oversight, misunderstanding, or mistake that all of those people were made illegal through the current law. It is very important that that becomes clarified, because none of those people are practicing midwifery in any capacity, and the way it is now, if you tell somebody, "Oh, I really like clary sage oil when I was in labor," you've now given advice and are now subject to the law and to penalties. There needs to be some sort of happy medium between all or nothing.

Ms. Hatcher asked for those in the conference room to introduce themselves. EO Teshima noted that Ms. Struempf and Ms. Duarte were present in the conference room. EO Teshima introduced EO Ho, a new Executive Officer, noted that she herself was present, introduced EO Pang as a new Executive Officer for the Committee, and noted the presence of Marc Yoshimura, Secretary.

Ms. Hatcher asked EO Teshima what EO Teshima wanted her to say. EO Teshima said that she did not want to tell Ms. Hatcher what to say, and asked Ms. Hatcher if she had any comments on the bills on the agenda. Ms. Hatcher said she did not.

Ms. Herrelson said that she supports these bills. She thinks that Act 32 left a lot of folks vulnerable to being criminalized, and we really need to clarify that to prevent the State from doing undue harm.

Ms. Pinto supports both bills. She said that to criminalize so many people is a continuation of a problem in the Kingdom of Hawaii. In 1864, a group of kupuna lā'au lapa'au, including Ms. Pinto's great great grandfather five generations before her, wanted to be acknowledged alongside western medical doctors. They, along with a group of twenty-four other kupuna lā'au lapa'au, wrote a hundred pages to the Board of Health proclaiming that Hawaiian medicine, traditional healing can actually help the epidemics that were happening in that time. They were pushed aside, and their very studious documentation was put in a drawer and not actually disseminated. Hundreds of Hawaiians were killed on behalf of that negligence. This is a repeating of history with this bill we're on the board for, that makes only two types of licensed midwives protected. We've seen since the beginning of the

1800s that this is something that needs to be stopped, and for some reason it continues to be perpetuated, so every generation, another act comes up to criminalize people that do not fit into specific, really small vernaculars of licensure. The bills on the agenda will actually start to make something different in history, what we've been trying to say all this time, that there are many different ways of healing people in our community. We need to stop this insanity of making only a really small group of people be the protected people. We are in a maternal health crisis where Native Hawaiians and Pacific Islanders die 450% more than ethnic whites, and this bill will actually help to solve this problem versus continuing to perpetuate and enflame it.

Ms. Minton wanted to share that in reading the bills introduced, HB 2649 and SB 2969, she definitely agrees that a person's right to choose where to give birth and who they want as their preferred birth attendant should be protected. She did not read in the Attorney General's interpretation of HRS 457J that a person's right to choose their birth provider isn't protected, because the law specifically is around regulating the midwife profession. She wanted to also state that she has concerns around this bill. The licensing statute under her understanding is specifically to regulate a profession that can cause harm to the welfare of the public, and it has therefore been determined that midwifery, as a profession in and of itself, has the potential to create harm, and therefore it is being regulated. She wanted to be clear that she does not believe that the midwife licensure law is to protect midwives, but to protect the public through regulation of a profession that is being provided as a choice to the public. With that said, Ms. Minton also believes that one profession should never regulate another profession, and doesn't agree with adding in things such as doulas, cultural birth workers, and other pregnancy and birth practitioners into the language of the law because that is not our kuleana to regulate. She does believe that the AG interpretation definitely shares with us that HRS 457J needs to be cleaned up, to have more clear definitions, because it is also true as stated that it was never the legislators' intent when reading their committee reports and their purpose and findings. Nor is it, in Ms. Minton's opinion, the midwifery profession's intention to ever regulate doulas and lactation consultants and birth workers. We don't believe that they are midwives or practicing midwifery.

Ms. Minton stated that she is not only a midwife, but also a board-certified lactation consultant, and that is a different training and a different scope of practice. The unfortunate thing is that the AG's interpretation of this law essentially says that if people do not have a license to practice otherwise, then whatever scope they're licensed in, they would be considered practicing midwifery. She also doesn't feel that the law criminalizes anybody. It does make clear what activities someone may choose to do for themselves to potentially provide to others would be considered illegal under the law, and that doesn't criminalize a human. She hopes that we can get clear on our language around the purpose of the midwifery licensure law, which is to regulate the profession of midwives. She recommends

that the Director of the DCCA considers looking at how that language can be improved so that it very cleanly is regulating midwifery and not other professions. She hears that in the AG interpretation, it looks at the findings and purpose that are not stated in law under HRS 457, but in the legislator's SB 1033 findings and purpose that there was intention to allow all practitioners to practice to the fullest scope under the law. Ms. Minton interprets that to mean that if other providers have not created definitions for themselves and accountability and scope of practice, that they're not considered midwives, and that they're not recognized under this licensure law. That may be that they are not specifically recognized to practice a profession that's regulated in Hawaii. That may be additional work that she doesn't believe sits in the midwifery law because it is not the practice of midwifery.

EO Teshima asked if anyone attending the meeting would like to testify on this agenda item or provide comments on this agenda item, to raise their hand.

Attendee Margaret Ragen was promoted to panelist and stated that the very first line under findings and purpose does involve a number of other different practitioners that practice outside of midwifery. She is in support of Ms. Minton's concern about integrating these other types of practitioners into regulation. Ms. Ragen feels the bill could benefit from clarification regarding other providers that practice outside of midwifery and have shared this commentary with other advocates for this bill. The bill definitely does need amending. The bill is regarding the practice of midwives that will be licensed and regulated through the midwifery program and the exemption portion of the bill could benefit from further clarification.

Attendee Kiana Rowley from Pacific Birth Collective was promoted to panelist. She stated that her organization serves women in Maui County, offering all different types of services to many women who were deeply impacted by the fires, including accessing services through their professional directory which includes a vast range of practitioners as well as their community birth project where they assist families in paying for services. They are a pro-choice organization that wants to help women especially as they face terrible health outcomes, which are compounded since the fires. They find it deeply concerning that their practitioners now face fear of persecution and unknowns in terms of how they will be impacted by legislation. Ms. Rowley said that her organization supports a path to licensure, and that they rely on their licensed midwives and are working towards more integration with the out-of-hospital community in order to smoothly transfer. With this interpretation of HRS 457J, they hear that the compounding impacts on their most vulnerable women, who are already struggling to find care even within the medical community because there are so few medical providers, that if they choose a different setting or provider, not only can they not get prenatal care, but it also impacts transports. Transports into the hospital are already so difficult because they don't have a strong relationship between even licensed providers. It

puts everyone into a very tricky situation, how to navigate this as an organization to continue to provide support to the community. They support clarification and collaboration. They believe that every provider deserves the right to support their community free of persecution, and every mother deserves the right to choose who and where and with whom she gives birth, and if a mother needs to go into the hospital for any reason, she can be open and honest and bring her support team with her to be able to receive the care that she needs in a respectful way, without being afraid of putting her care team at risk.

Laulani Teale from Ho'opae Pono Peace Project was promoted to panelist and stated that she is currently on Maui participating in fire relief efforts since the day the fires broke out. She has been meeting with various folks from the birth community, including licensed midwives and unlicensed traditional practitioners. What she hears in the community is that they are very, very concerned about this Attorney General opinion, and that goes for licensed midwives who are affected because their students who are not in ACME-credited schooling, because their cultural assistants are affected, and because the AG has stated that they are not looking to protect cultural practitioners by default, which would mean that practitioners would be up to defend their constitutional rights in court, where they would probably win, but that is not a good protection. She proposed that one of the interim rules be a temporary moratorium on enforcement against practitioners, just until we can figure this out and clarify the law. She knows there are some pretty good proposals and bills out there that could clarify the law to continue the licensure program effectively for clinical midwifery, while at the same time ensuring that the plethora of other birthing practitioners, including cultural practitioners, kanaka maoli and otherwise, are protected. What she hears in the community is that doulas are not feeling safe to practice, and she really doesn't want mothers in Maui affected by the fires to lose services right now. She quoted Act 32: "Nothing in this chapter abridges, limits, or changes in any way the right of parents to deliver their baby where, when, and how, and with whom they choose, regardless of licensure under this chapter." Finally, she proposed moratorium language: "a moratorium on enforcement against any practitioner whose participation in birth work is necessary to uphold this provision, or to ensure safety in any community birth setting, or to perpetuate the practice of traditional Native Hawaiian healing, shall be in effect until permanent rules or this chapter are established."

Mieko Aoki was promoted to panelist and stated that she is an actively practicing licensed midwife on Kauai, embedded in Kauai culture. She stated that the core purpose of licensing the profession is to protect the public. The public is based in culture, and Kauai rural culture needs to be protected. Ms. Aoki knows several birth attendants that support families that give birth in rural areas, where other licensed midwives have unethically made people move outside of their homes to give birth. Hundreds of people live in the rural areas of Kauai, such as past Hanalei Bridge, where there is no ambulance that will go past the bridge and no landing pads for helicopters, but they choose to give birth there with their choice in

birth attendants. With this AG letter stating clearly that it criminalizes extended family members, who are one of the main supporters in this area, we must not let that happen. You are not protecting the rural culture of Kauai by taking that away. Because those are the current birth attendants attending these births, they are the ones that are illegal right now, so it's unethical to ask for families to move out of their home. We don't know when they're going to give birth. To find housing in Kauai is insane. It's $3000-4000 for a studio without a kitchen, and they're already renting in their home, so this is taking away their rights to choose who they want to birth with. As a community member, it's important to protect their culture, to support them, instead of trying to modernize them or change their culture or get them to conform to laws and rules put on by cultures that don't understand other cultures. It will create more barriers to access to care if we don't pass and support SB 2969 and HB 2649 and listen to the Attorney General as well. Ms. Aoki said there is so much misleading information that is publicized, and we need to stop that.

Daniela Martinez was promoted to panelist and stated that she supports the bill being discussed. She said that the AG agrees with the concerns that anyone who is a community member giving advice during maternity to mothers who is not licensed is vulnerable to criminalization. That opinion trumps anyone else's perspective of what anyone else thinks the law may or may not or should have been. Ms. Martinez said that we need to recognize that there's been a mistake in the way the law was written, and we have an opportunity to fix it. It's not about regulating other professions at all; it's just about clarifying the definition of "midwife." Ms. Martinez is a licensed midwife, actively attending home births on Oahu, and wants her own profession to be well-defined so that no one else who is unlicensed is in danger of being accused of practicing midwifery without a license. The AG has made it clear that the definition of a midwife is too general. We don't have a lot of midwives and we don't have a lot of options on any of the islands. The law as it stands restricts options for moms and makes it more dangerous for them, and the bill helps address these issues.

Ms. Duarte asked Ms. Martinez how many licensed midwives are attending births on Oahu. Ms. Martinez said her understanding was that there are four of them who are licensed and actively attending births.

Ms. Ki'inaniokalani Kaho'ohanohano was promoted to panelist and stated that she is a cultural practitioner in Maui who has attended births for over twenty years with a beautiful record and beautiful outcomes. She has served underprivileged and mostly BIPOC communities, her native Hawaiian community, and emphasizes treating birth as ceremony. She stated that this law has made her stop practicing and stop serving her community. She sees rising disparities among people whom she used to serve, who used to have beautiful outcomes in the past, who are now turning to the hospital, and there is no explanation for what she's seen. She supports the bills.

EO Teshima then read the following testimony from Pahnelopi McKenzie: *"I speak as a Student IBCLC within the pathway 3 model of certification. There is no License for lactation professionals in Hawaii only international and independent certification at various degrees of proficiency.*

I am writing in great concern for the recent Attorney General statement in regards to clarifying the scope and practice of Midwifery. The generalization of the collaborative Maternal health care providers has been lumped up into the Midwifery definition. This has been our concern all along about the criminalization of Birth workers given the grey area language in HRS 457-J and Act 32.

I ask that you investigate the dangerous and discriminatory issues that affect all birth professionals as clearly stated by the Attorney General statement (attached) and language of Act 32 as it currently stands.

Please support bill HB2649 (attached) and SB2969 as the clarity of definition must be addressed and include all birth professionals to legally practice within their scope."

Ms. Ezinne Dawson appeared before the Committee in-person and testified that she is a licensed midwife practicing in Oahu. She shared the following testimony: ***"****The definition of criminalize is:*

"To turn (someone) into a criminal by making their activities illegal.
"these punitive measures would further criminalize travelers for their way of life"

Literally people go to jail not ideas

As a practicing licensed midwife on Oahu it is important to have the ability to collaborate with support systems and other community members as trained assistants while attending births and so I ask that we consider the implications on safety measures if we restrict the activities of of our support people's due to their fears of criminalization"

Ms. Dawson further said that she echoed Ms. Martinez's sentiment that this does limit their abilities to interact with community members and have the support they need to practice safely while performing home deliveries. They need people feeling comfortable attending home births with them, not worried about being criminalized.

Review and Discussion of Proposed Rules for License Midwives' Draft #2:

EO Teshima explained that pursuant to Act 32, the Committee is permitted to create interim rules that will forego the procedures in HRS Chapter 91 and 201M. There must be at least one public hearing on the proposed rules. Once the interim rules are approved, they can go into effect for one year.

EO Teshima stated that although the interim rules last for one year, this does not preclude the Committee from working further on the administrative rules based on legislation or other factors. She emphasized that all created administrative rules must adhere to the underlying law, HRS Chapter 457J. The administrative rules are used to clarify the statute, but the rules cannot create anything new that does not already exist in statute.

EO Teshima called upon Ms. Duarte and Ms. Struempf to offer their comments and recommendations on Draft #2 of the proposed administrative rules on midwives, as they had both submitted their written comments to EO Teshima first. Ms. Duarte offered her comments for discussion first.

"Definitions": discussion on definition of "midwife assistant"

Ms. Duarte directed the Committee to page 2 of Draft #2, specifically the definition of "midwife assistant." In the draft, "midwife assistant" is defined as "a person who has limited training and functions and performs basic administrative, clerical, and midwife technical supportive services for a licensed midwife or certified nurse-midwife licensed as an advanced practice registered nurse under the direct supervision of a licensed midwife." Ms. Duarte asked if certified nurse-midwives have an assistant in their own rules, as she read the language to say that a midwife assistant could be performing supportive services for a certified nurse-midwife. She wondered why certified nurse-midwives should be mentioned in this definition at all.

Ms. Struempf clarified that under the language of the draft, the "certified nurse-midwife licensed as an advanced practice registered nurse" would be the midwife assistant practicing "under the direct supervision of the licensed midwife," not the other way around.

EO Teshima suggested that perhaps certified nurse-midwives should not be part of the definition at all, as they are already exempt from licensure and their practice is already defined under HRS Chapter 457J.

Ms. Struempf suggested editing the draft definition of "midwife assistant" as follows: "a person who has limited training and functions and performs basic administrative, clerical, and midwife technical supportive services [~~for a licensed midwife or certified nurse-midwife licensed as an advanced practice registered nurse~~] under the direct supervision of a licensed midwife."

Ms. Minton asked whether the Committee would review each Committee member's comments on the draft one by one, or if this process would serve as an open discussion between all the Committee members on the entire draft. EO Teshima asked if Ms. Minton had any comments on the draft definition of "midwife

assistant." Ms. Minton responded that she believed the entire definition should be deleted. Ms. Minton said that historically, this has come up in other states, and California defines this because they actually provide a form of regulation for midwife assistants in the way that certified nurse assistants have a form of regulation in this State. There is no program for midwife assistants here. We don't require licensure, for example, for a medical assistant, nor is it defined in the physician's licensure chapter.

EO Teshima said that when she reads this definition of "midwife assistant," it has nothing to do with midwifery. Reading the draft language, she questioned what "midwife technical supportive services" are. Ms. Minton said that that is defined further down, right below "midwife assistant."

EO Teshima asked Ms. Hatcher if she utilizes a midwife assistant. Ms. Hatcher said yes. Ms. Struempf also noted that she uses one. EO Teshima then asked if Ms. Herrelson uses one, and Ms. Herrelson said yes. EO Teshima asked those who use a midwife assistant to look at this definition. Ms. Struempf reiterated that she would accept the definition with the deletions she had suggested prior.

EO Teshima asked Ms. Minton if she utilizes a midwife assistant. Ms. Minton answered that all providers have assistants. She asked, what's the difference of a midwife assistant then a medical assistant than a nursing assistant, and this is why she thinks we don't need to define it in admin rules because we don't regulate that profession, and now we're trying to say that a midwife assistant is a different human than a medical assistant, which is different from a nursing assistant, when it's not a regulated job. Everybody uses an assistant.

EO Teshima stated that this is a midwife assistant with specific duties under the supervision of a licensed midwife.

Ms. Minton asked: so that means that if someone has training as a medical assistant, they went to school and they have their certificate as a medical assistant, then their name just becomes "midwife assistant" when they work for a licensed midwife?

Ms. Struempf said that's not what that says. EO Teshima said if they're performing anything in the definition. She thinks this is where the issue is: if some midwife assistant, because we changed out this definition, and they're carrying out the orders or under the supervision of a licensed midwife, and someone says, "hey, you're doing midwife, you're acting under the scope of practice as a midwife," and this definition no longer exists, how are they going to defend themselves from saying, "I'm working with Whitney Herrelson as her assistant"?

Ms. Minton said she thinks that's a great question, and she understands the intent. Her question is, why do we have concern that an assistant would ever be

considered to be practicing midwifery when we don't believe that a medical assistant is practicing medicine by taking a blood pressure?

EO Teshima said she is not going to compare that with a medical assistant. Because of the way the midwives laws are written, and with the current bills being introduced for clarification, she thinks it's different.

Ms. Minton said that what she's hearing is it's different because the midwifery definition is unclear at this time and too broad. So with that said, she agrees at this time that this definition can remain. She then asked: in taking out having an assistant under a CNM, for the certified nurse-midwives attending a birth in the community, how is that assistant under them A) not a midwife assistant and B) to EO Teshima's concern, not now practicing midwifery without a license if you take out the CNM?

EO Teshima said that as a CNM, your scope of practice is already defined in HRS 457.

Ms. Minton said that she understands what her scope of practice is, but we're talking about the midwife assistant. She asked, is EO Teshima saying that by being an assistant to a CNM practicing in the community, that it therefore automatically changes that person's title to a nurse assistant?

EO Teshima said, why are you saying that we should included to who I use as an assistant? You're exempt. Unless you're licensed as a midwife, you're exempt from this law.

Ms. Minton said, I'm exempt, but the person working for me, then you're saying because I'm exempt, then the person working under me would not be able to be determined to be practicing midwifery?

EO Teshima said she's not making an interpretation, but to her, they're practicing under you as a certified nurse-midwife, as an APRN, not a licensed midwife. Not to these rules. She said that she would remove "certified nurse-midwife" from the draft.

"Definitions": discussion on definition of "midwife technical supportive services"

Ms. Duarte directed the Committee to the definition of "midwife technical support services," which reads, "simple routine medical tasks and procedures not requiring professional judgment and under the supervision of a licensed midwife." She asked, what is "not requiring professional judgment"?

Ms. Struempf said, that would be like fetal heart tones, assessing if a baby is going into fetal distress, that's the technical part. Ms. Duarte asked, so who determines that? Ms. Struempf responded, the midwife does. They can take blood pressure, but they're not determining whether or not the client needs to be transferred to the hospital because their blood pressure is too high.

Ms. Duarte asked if the other licensed midwives, Ms. Hatcher and Ms. Herrelson, are OK with the definition of "midwife technical supportive services" under the draft. Ms. Hatcher said yes. Ms. Herrelson nodded.

"Licensure Requirements": discussion on PEP pathways

Ms. Duarte then directed the Commission to the section reading "Licensure Requirements: Evidence of the following is required for a midwife license […] (b) Certified professional midwife: […] (B) A midwifery bridge certificate issued by the North American Registry of Midwives for certified professional midwife applicants who either obtained certification before January 1, 2020, through a non-accredited pathway or who have maintained licensure in a state that does not require an accredited education[.]" She wanted to point out that our law allows PEP pathway from other states who have gotten licenses through it to at least apply here for a license. She wanted to make a note that it would be great if we could acknowledge and recognize our own PEP pathways here who cannot get a license to have that kind of recognition.

EO Teshima asked what Ms. Duarte was suggesting. Ms. Duarte said, nothing, she just wanted to put it on the statement.

Ms. Struempf said that before or after January 1, 2020, but we couldn't change that because that's part of 457J. Ms. Duarte acknowledged that the Committee can't change anything if it's not part of the statute, so no changes needed.

"Scope of practice as a licensed midwife; disclosure requirements": discussion on "appropriate regulatory and other legal documents" and "informed consent"

Next, Ms. Duarte directed the Committee to the section titled "Scope of practice as a licensed midwife; disclosure requirements" subsections (c)(6) and (c)(7), which read: "(c) The practice of midwifery is based on and is consistent with a licensed midwife's education and national certification including but not limited to: […] (6) Initiating and maintaining accurate records and authorizing appropriate regulatory and other legal documents; (7) Providing informed consent in adherence with the licensee's professional requirements, as required by section 671-3[.]" Ms. Duarte asked, what are the "authorizing appropriate regulatory and other legal documents"? Who determines that? And for "informed consent," is that a standardized form coming from this?

Ms. Struempf said, the state specified informed consent for the midwives and what you have to put in there. Ms. Duarte asked, is that consent form from the State? Ms. Struempf replied, no, each midwife makes their own informed consent document, but there are requirements in HRS 457J that specify what they should say.

Ms. Duarte asked again, what are the "appropriate regulatory documents" that they are required to "initiate and maintain"? Ms. Struempf said she believes that would be like patient records.

EO Teshima said that "appropriate regulatory and other legal documents" is a general term and she does not know if it can list specifically. Ms. Struempf said she believes that's in the nursing one too, it's like verbatim, it's one of those that's like a copy and paste.

Regarding subsection (c)(7), EO Teshima asked about the reference to "section 671-3." Ms. Duarte said she looked it up, and that's informed consent law. EO Teshima asked, by who? Ms. Duarte said, it looked like medical, but she'll look it up. Ms. Struempf said right now, our informed consent is required to have your method of training, your practice guidelines. EO Teshima asked, isn't that only for exemptions? Ms. Struempf said she believes we're all required, and she gives an informed consent form to every person she touches.

Ms. Minton said it looks like what this is referencing is that the definition of informed consent exists within HRS 671-3, so it seems that is what the reference is to because that is where the definition of informed consent is. Ms. Struempf said it's standard, we all do it, or should anyway.

EO Teshima asked, where does it say you guys are required to get informed consent under 457J? Ms. Minton replied, it doesn't. Ms. Struempf said OK, but NARM requires us to get informed consent. EO Teshima said that's NARM, but it's not referred to here.

"Scope of practice as a licensed midwife; disclosure requirements": discussion on references to "Board of Medicine"

While still reading from the section titled "Scope of practice as a licensed midwife; disclosure requirements," Ms. Duarte referred the Committee to subsections (d)(vi) and (d)(vii), which read: "Any person as a licensed midwife shall provide disclosure of specific information in writing to any client to whom midwifery care is provided. Such disclosure shall include […] (vi) a description of the right to file a complaint with the Board of Medicine and the procedures for filing such complaint; and (vii) such other information as the Board of Medicine determines is appropriate to allow

the client to make an informed choice to select midwifery care." Ms. Duarte questioned why the language referenced the Board of Medicine.

Ms. Minton said she had an immediate comment to resolve Ms. Duarte's question. She noted that EO Teshima had stated that this was taken from the Virginia midwife regulations and they're regulated by the Board of Medicine. Ms. Minton's recommendation was just to change the first instance of "Board of Medicine" to something like the "DCCA Regulating Industries Complaints Office" and the second instance of "Board of Medicine" to "Director of DCCA." Ms. Struempf said she agreed with that. Ms. Minton noted that she had made those changes in the comments of the document.

"Care provided by licensed midwives; requirements": discussion on requirement to "continually urge the mother […] to transfer care"

Ms. Duarte then directed the Committee to the section titled "Care provided by licensed midwives; requirements" subsection (e): "If the mother or baby's guardian refuses assistance from appropriate licensed health care providers or the 911 emergency system, the licensed midwife shall continually urge the mother or baby's guardian to transfer care to an appropriate licensed health care provider and may continue to provide care to save a life; provided that the licensed midwife shall only perform actions within the licensed midwife's technical ability."

Regarding "shall continually urge the mother," Ms. Duarte said it's her understanding that EMT cannot force care so they have you sign a waiver. Is there some sort of option for a licensed midwife of signing a waiver so they don't have to continually urge the mother?

Ms. Minton recommended a change to that sentence but asked Ms. Struempf to speak first. Ms. Struempf said she understands that that seems annoying, she's been in a transport situation where the mother was refusing to transport, and she doesn't particularly find anything wrong with this personally. Ms. Herrelson wondered about how we define "continually urge." Ms. Duarte replied, probably through a waiver, which would release the continually urging.

Ms. Hatcher said she thinks that in transfer situations, when emergency care is necessary, they're an evolving situation that's constantly changing, so that "continually urge" is appropriate. She also asked how to comment on the draft, because it seemed like people were just commenting at random.

EO Teshima said that this had all been emailed to the Committee to provide comments and recommendations. The reason EO Teshima called upon Ms. Duarte first and would then call upon Ms. Struempf next is because EO Teshima received their comments via email. As far as EO Teshima knows, they are the only two which provided EO Teshima with their recommendations. Ms. Herrelson

just started so she's excused, and Ms. Minton said she provided comments. EO Teshima asked Ms. Minton for those comments so that she could share them with the rest of the Committee. Ms. Hatcher asked what she should do if she had comments at present. EO Teshima said that if Ms. Hatcher had comments on any of the matters being discussed, she could raise her hand or say her name and she would be called on for comment. Ms. Minton said she put all of her comments in the drive that was shared.

Returning to the draft section titled "Care provided by licensed midwives; requirements," Ms. Minton stated that subsections (a) through (e) were connected, and that she had recommended in her comments that subsection (d) be moved up to (c), so that it follows then if we're in an urgent transport. She also suggested potential edits to (e): "if the client or client's guardian declines assistance from appropriate licensed healthcare providers…" (here Ms. Minton commented: because that may not be in the immediate transport system, it may just be as a referral) "… or the 911 emergency system, the licensed midwife shall ensure release of liability is signed by the client or client's guardian once evidence-based education, verbal or written, has been provided to the client or client's guardian regarding their condition that is outside of the licensed midwife scope of practice what the recommended standard of care is for the condition, what services or resources the client can access from the other licensed health care provider or facility, and what evidence-based outcomes the licensed midwife anticipates the client may experience if they transfer care versus remain with the licensed midwife. The licensed midwife may continue to provide care to save a client's life provided that the licensed midwife shall only provide care that is within the licensee's scope of practice pursuant to this chapter." Ms. Minton reiterated that her comments are on the drive and said she is also fine with what is there. She did recommend changing the word "refuses" to "declines" but is OK with the sentence that is there.

EO Teshima commented, doesn't that seem like a lot to do in an emergency? Ms. Minton replied, the sentence isn't only in an emergency in the way that it's written, and that she's also fine with using the word "continually urge" when we're talking about an emergency. She did think that you can state, very quickly, essentially what an issue is, and gave an example: "It appears you have preeclampsia, that is outside of my scope, that can result in these life-threatening situations, if we get you to a hospital they can provide you this care. That is why I recommend we go now." Ms. Minton said that's informed consent, essentially.

Ms. Struempf said that she thinks using "declines" instead of "refusing" is fine but thinks that trying to get a written document signed by somebody in an emergency is not realistic, although it would be ideal. She did think that in an emergency, we are telling them, "hey, your blood pressure is skyrocketing, you have symptoms of preeclampsia, we need to go," but she may not have time to write that in a

document when she's trying to manage care at the moment, so she thinks that having a written document is a lot.

Ms. Duarte suggested adding an "or" so the midwife can choose to continually urge them "or" as the client, if it was her, she would like having the option to sign something or there might be other times that don't, and that means that the midwife would continually urge. Ms. Struempf commented, it's just that the midwife is going to have to stop in an emergency situation and write something down for them to sign. When you're in an emergency, it's not like you can just, "hey, let me write this down for you to sign."

Ms. Hatcher said, there's of course not time to be writing down a document in an emergency situation, but according to the informed consent and disclosure guidelines, it's already written in ahead of time about the description of the midwife's qualifications, experience and training, written protocol for medical emergencies including hospital transport particular to each client, it's already covered. EO Teshima asked where. Ms. Hatcher referred to the prior section, "Scope of practice as a licensed midwife; disclosure requirements," subsection (d): "Any person as a licensed midwife shall provide disclosure of specific information in writing to any client to whom midwifery care is provided." Ms. Hatcher said basically, when a midwife's practice guidelines are explained, clients agree to that, and then when a situation is beyond a midwife's practice guidelines, that has already been discussed prior so that people know exactly where midwives draw their line in how they provide care or what they can continue to manage.

Ms. Minton said that the way the current sentence is written in "Care provided by licensed midwives; requirements" subsection (e), we're all assuming it's only about an emergency, but it's actually not specifically written only for that, so she agrees that we don't necessarily create a new document in an emergency, and at the same time, the way the sentence is written, that may not be in an emergency situation where you're actually, according to subsection (b), referring the client to an appropriate health provider. That could just be during intrapartum (non-emergency) and antepartum. Obviously we need to spend more time on that, and she believes that the Committee is in agreement around what's being said, and it's just clarifying the language a little more.

"Unprofessional conduct": discussion on "safeguarding a client from incompetent health care practices" and "abandoning a client"

Ms. Duarte directed the Committee to the section titled "Unprofessional conduct," subsections (5)(D) and (5)(G), which read: "Midwifery behavior which fails to conform to legal standards and accepted standards of the midwife profession and which reflect adversely on the health and welfare of the public shall constitute unprofessional conduct. The types of unprofessional conduct covered in this provision includes but is not limited to: […] (5) Performing unsafe client care or

failing to conform to professional standards required of a midwife which poses a danger to the welfare of a client including: […] (D) Failing to take appropriate action in safeguarding a client from incompetent health care practices […] (G) Leaving a midwifery assignment or abandoning a client without properly notifying appropriate personnel […]"

Regarding subsection (5)(D), Ms. Duarte said she doesn't know if it's the responsibility of the midwife to try to police other health care practices or choices they might be making. EO Teshima said that it's not about someone else, it's about midwives failing to safeguard their client. If a midwife fails to safeguard their client, then they are engaging in unprofessional conduct.

Regarding section (6), Ms. Duarte asked who is "appropriate personnel," and what is the proper way to discharge a client from care, and is this done pre-labor or in labor?

Ms. Minton said that this is about regulating midwives, not relating to the birth environment, and so it depends on what the circumstance is. If, for example, you are in labor and the licensed midwife just leaves and does not transfer that client into another care provider's care that's appropriate, that would be unprofessional conduct without properly notifying appropriate personnel. That could also be if you're just in prenatal care as their provider and then you are not responding to them, not communicating with them, not showing up to the appointments you've made with them, not notifying them that you've discharged them for your care, you have not provided them transfer of care to another provider. She thinks it depends on the circumstances that you are leaving them in unprofessionally.

EO Teshima said basically it's about abandoning your client. She suggested the following change to subsection (G): "Leaving a midwifery assignment or abandoning a client [~~without properly notifying appropriate personnel~~]." Ms. Duarte, Ms. Minton, and Ms. Struempf all voiced their approval of this suggestion.

Ms. Duarte indicated that she had finished discussing all her comments and questions on Draft #2. Ms. Struempf began reviewing her comments on the draft.

"Scope of practice as a licensed midwife; disclosure requirements": discussion on "birth centers"

Ms. Struempf directed the Committee back to the beginning of Draft #2, to the definition of "community birth setting" as "a birth center, home birth, or location within the community." She asked the Committee to remember the language of "birth center." She then directed the Committee to the section titled "Scope of practice as a licensed midwife; disclosure requirements," subsection (c)(12)(B), which reads: "(c) The practice of midwifery is based on and is consistent with a licensed midwife's education and national certification including but not limited to:

[…] (12) Admitting and discharging clients for inpatient care at facilities licensed in the State as: (A) Hospitals; provided that this subparagraph shall only apply to licensed midwives practicing as certified midwives; and (B) Birth centers.

Ms. Struempf said she feels that the birth centers should include CPMs. The majority of the states that have certified professional midwife licensure allow certified professional midwives to own and operate free and independent community birthing centers. If Ms. Struempf opened a birth center, according to this, she would need to find a certified midwife, or doctor, or certified nurse-midwife to both admit and discharge her clients which doesn't work. She feels that birth center discharge and attendance could include the CPM and not just be limited to the CM.

EO Teshima said that per her understanding, birth centers are already regulated. Ms. Struempf said there was a law passed in 1988 that's out of date and was written before the midwives were put under the Board of Nursing so it's obsolete, but at some point it's gonna get fixed.

EO Teshima said that law is still on the books, so we don't regulate birth centers. We can't say who can own a birth center, we can't say who can run a birth center. Ms. Struempf asked, but you can say who admits and discharges from a birth center? The certified midwife didn't even exist in 1988, so that doesn't work for them either, so "birth centers" should be stricken. EO Teshima said no, it can stay in there, but we cannot dictate who can and cannot admit. Ms. Struempf said, but we're saying that the certified midwife can in this chapter?

Ms. Minton said she's unsure, and thinking that perhaps the way Ms. Struempf is reading this, are you talking about certified midwives because the hospital portion says it only applies to CMs? Specifically under the scope of practice of a licensed midwife, meaning both CMs and CPMs. So the way the sentence is written is that any licensed midwife can admit and discharge clients for inpatient care facilities licensed in the State as birth centers. It is not excluding a licensed midwife whose certification is a CPM, and Ms. Minton agrees that the birth center admin rules can use updates, but it's not actually excluding any licensed midwife from being able to carry out their scope of practice because the definition in the birth center admin rules is midwife means a person licensed by the State of Hawaii as a midwife, which CMs and CPMs are licensed as midwives, so they meet the definition in those admin rules. She doesn't see an issue.

EO Teshima said in that same section, should we reference certified midwives for the hospitals? Ms. Struempf said certified midwives are clearly the only ones who have the ability to admit and discharge from a hospital. EO Teshima replied, so you're saying that only a certified midwife can admit and discharge clients for inpatient care at a facility? Ms. Struempf said for a hospital, but not for a freestanding birth center. Ms. Minton said, correct.

EO Teshima clarified that the language in subsection (c)(12)(A) only applies to itself and does not apply to (c)(12)(B). Ms. Struempf said OK. Ms. Minton said, as long as that's what it is intended to be, there's no issues.

"Care provided by licensed midwives; requirements": discussion on reference to the "American College of Nurse-Midwives Clinical Bulletin"

Ms. Struempf then directed the Committee to the section titled "Care provided by licensed midwives; requirements" subsection (a), which reads: "(a) Licensed midwives shall continually assess the appropriateness of the planned location of birth, and shall refer to the American College of Nurse-Midwives Clinical Bulletin: Midwifery Provision of Home Birth Services (November 2015), or succeeding document, for guidance, taking into account the health and condition of the mother and baby." Ms. Struempf said that the American College of Nurse-Midwives authority only applies to certified midwives. ACNM does not have authority over certified professional midwives. She feels that putting us in the category of recognizing their clinical bulletin and any subsequent document could create an issue. EO Teshima asked, how would you want to reword this? Ms. Struempf said she doesn't have a problem with "continually assess the planned location of birth," but she should not have to refer to the American College of Nurse-Midwives Clinical Bulletin: Midwifery Provision of Home Birth Services (November 2015), or succeeding document."

Ms. Struempf suggested adding the following underlined language: "(a) Licensed midwives shall continually assess the appropriateness of the planned location of birth, and **certified midwives** shall refer to the American College of Nurse-Midwives Clinical Bulletin: Midwifery Provision of Home Birth Services (November 2015) […]" in order to specify that the certified midwives are required to follow the American College of Nurse-Midwives' recommendations.

Ms. Hatcher asked if there was a document for CPMs for licensed midwives that defines the appropriateness of the planned location of birth. She commented, that should be included for the licensed midwives. Ms. Struempf said she's happy to research that.

Ms. Minton said, in response to Ms. Hatcher's question, the document does not exist, and that is why for every other state that regulates licensed certified professional midwives, they have admin rules that are exquisitely detailed in order to define what is considered a low-risk pregnancy, what is appropriate for birth settings, what a CPM can attend, and when they are required to transfer. Historically, because the American College of Nurse-Midwives has this bulletin, which is specific to the profession of midwifery, that document then defines what it states are different conditions in pregnancy and what the recommended but not required birth setting is for that. Without having to then create admin rules that will

individually list every single condition and go through the agreements on every single point of those, that that document could be utilized in order to address that issue. The certified professional midwives do not have a specific document that defines, for example, what hypertension is and what preeclampsia is and what the standard of care is during those conditions. That's not what that entity defines. As an example, in healthcare, there are many other organizations that we look to as professionals as the standard of care. Ms. Minton believes that having a document specifically about the home birth environment or community environment, as well as written by a midwife organization that is speaking about midwifery practice, is a good document to look at, and not strike from one conversation, because it will open up a lot of work.

EO Teshima asked Ms. Pinto if she had anything she wanted to discuss regarding Draft #2. Ms. Pinto said no.

EO Teshima said that the draft needed another look. She said she would consolidate what was discussed in Draft #3 and email that document to the Committee members. She asked the Committee members to make any comments or recommendations via track changes and email them back to her. She would then provide those comments to the rest of the Committee members.

DAG Wong said she had heard the discussion on Draft #2 and would forward her own comments suggestions on Draft #2 to EO Teshima.

"Scope of practice as a licensed midwife; disclosure requirements": discussion on "peer review"

Ms. Minton directed DAG Wong to the section of Draft #2 titled "Scope of practice as a licensed midwife," subsection (c)(13), which reads: "(c) The practice of midwifery is based on and is consistent with a licensed midwife's education and national certification including but not limited to: […] (13) Participating in joint and periodic evaluation of services rendered such as per review, including chart reviews, case reviews, client evaluations, and outcome of case statistics […]"

Ms. Minton asked, what would we need to do in order to ensure there are protections so that peer review cannot be discovered? Her understanding is that currently peer review is only protected under HRS 435E, Physicians and surgeons cooperative indemnity. Would we need peer review written into HRS 457J or could this be defined an addressed within administrative rules? Ms. Minton wanted to bring up the importance of nondiscoverability for peer review, and if that's something that the Committee and the administrative rules are able to address, and if that could be looked into.

Ms. Struempf asked Ms. Minton if there was something like that for CPMs offhand. That's under the scope of the CM? Ms. Minton said, that's not under the scope of

the CM, it's under the scope of the licensed midwife. Ms. Struempf said, got it. Ms. Minton continued, the issue for providers is ensuring that peer review is nondiscoverable because it is not supposed to be punitive and not supposed to be utilized against a provider in any case, it's supposed to be educational and a place of learning.

Next Meeting: TBA

Adjournment: The meeting was adjourned at 10:59 a.m.

Taken by:

/s/ Alex Pang
Alex Pang
Executive Officer

LAT

2/2/24

[X] Minutes approved as is.

[ ] Minutes approved with changes; see minutes of _____.