

FINAL REPORT OF THE
FINDINGS AND RECOMMENDATIONS

BY THE
NEBRASKA BOARD OF HEALTH

ON THE PROPOSAL OF
MIDWIFERY AND HOME BIRTHS

TO THE
DIRECTOR OF HEALTH

AND THE
NEBRASKA LEGISLATURE

JANUARY 24, 1994

Recommendations of the Full Board of Health on the Proposal

Chairperson Weaver asked Carl Maltas, the chairperson of the Midwifery and Home Birth Technical Review Committee and chairperson of the 407 Committee of the Board, to comment on the work of these two committees. Mr. Maltas informed the Board members that the technical committee conducted a "directed review," and created a document proposing to license lay midwives and to allow CNMs to do home births. Mr. Maltas then briefly described the review of these two ideas by the 407 Committee of the Board. Mr. Maltas informed the Board members that the 407 Committee members recommended against both of these ideas. Mr. Maltas moved that the Board members approve the recommendations of the 407 Committee on both of these issues. Dr. Caudill seconded the motion.

Chairperson Weaver then asked for comments from interested parties to the review on direct entry midwives. Lisa Bradley, a member of the Birth Awareness Group and a member of the technical committee that created the proposal to license lay midwives, came forward to testify. Lisa Bradley submitted a fact sheet on the issues of home births and midwifery. Ms. Bradley informed the Board members that lay midwives provide a safe, cost-effective and easily accessible service, and that studies show that a home birth attended by a midwife is a safe alternative for low-risk mothers. Ms. Bradley stated that this alternative involves significantly lower costs than does a hospital birth with an attending physician, and that a midwife charges an average of \$1200, while the costs of a physician's care averages \$4200. Ms. Bradley informed the Board members that national insurance companies frequently cover midwifery services. Ms. Bradley stated that midwives could be used economically to serve out-state rural areas where there are shortages of doctors and health care facilities, and added that

few deliveries require that a medical specialist be present.

Dr. Mark Kellough asked Ms. Bradley whether the recommendations of the technical committee reflected a consensus of the committee members. Ms. Bradley responded by stating that no votes by the technical committee were closer than six to two, and that many were eight to zero. Dr. Kellough indicated that this shows broad-based support for recognition of lay midwives and CNMs from a technical committee that was multidisciplinary nature.

Patricia McQuillan asked Lisa Bradley to compare medical doctors and midwives regarding malpractice. Ms. Bradley stated that high malpractice rates is one reason why many doctors are getting out of obstetric care. Ms. Bradley stated that midwives on the other hand are seldom sued, and that this is due to their emphasis on building trust and involving parents in the decision-making process. Carl Maltas then informed the Board members that Nebraska's malpractice rates are amongst the lowest in the nation due to the fact that we have created a malpractice insurance "cap."

Margaret Allington asked Lisa Bradley how many out-of-hospital births there are in Nebraska a year. Ms. Bradley responded that there were seventy-eight in 1991. Board member Allington then asked Ms. Bradley if she had infant mortality data on home births as opposed to infant mortality in general. Ms. Bradley responded that the 1991 data indicates three deaths per thousand for home births and eight deaths per thousand for all births.

There were no more questions for Lisa Bradley, and the Board members then discussed the issues of home births and lay midwifery. Dr. Caudill informed the Board members that it is difficult to identify with any degree of certainty who is or is not "low-risk," and that things can "go bad" unexpectedly, very fast, even for mothers who fit the definition of "low-

risk." Dr. Caudill expressed concern that many physicians would be reluctant to provide backup or even to do an exam to determine the extent of risk for fear of being held liable for a bad outcome.

Dr. Kellough responded to Dr. Caudill by stating that there are components of high and low risk. Dr. Kellough went on to say that birth is a natural process and not a medical event, and that the option of a home birth should be available to those who seek it. Dr. Kellough stated that the current situation restricts access to birthing care especially in rural areas, and requires that people utilize the most costly alternatives to care regarding birthing and delivery.

Patricia McQuillan cautioned the Board members not to make this a "rural-access-to-care issue," and shared her own personal experiences as a mother and resident of a rural community. Board member McQuillan informed the Board members that she fit the definition of "low-risk" with a previous pregnancy, but that things went wrong very fast, and that if she had not been in a hospital, she might have died. Ms. McQuillan added that she sees potential for harm in home births. Margaret Allington described similar personal experiences, and expressed concern about the safety of a situation wherein a mother is as much as 30 minutes away from a hospital, when a few minutes can make the difference between life and death.

Dr. Fitzgerald stated that he sees home birth as a "step backwards," but that if we were to approve some version of the technical committee's recommendations, we need to identify the best people we can find within the midwifery community to do home births. Dr. Fitzgerald expressed the opinion that CNMs are those people.

The Board members then voted on whether to approve the recommendations of the 407 Committee on licensure for lay midwives. Voting aye were

Allington, Balters, Caudill, Christensen, Fitzgerald, Foote, Hirschbrunner, Maltas, McQuillan, and Wempe. Voting nay was Kellough. Polzien and Weaver abstained from voting. By this vote the Board members approved the recommendations of the 407 Committee on lay midwives which meant that they recommended against licensing lay midwives.

The Board members then took up the issue of whether CNMs should be allowed to do home births. Chairperson Weaver asked if there were persons who wished to present testimony on the issue. Ann Seacrest, a member of the CNM Advisory Council, came forward to present testimony. Ms. Seacrest stated that a CNM is an RN who has attended an accredited certificate or masters-level midwifery program, passed the national exam, and has established a practice agreement with a physician. Ms. Seacrest stated that the current prohibition on home births was put in their statute as a compromise to get it passed in the Legislature, but that CNMs have the training to do home births safely. Ms. Seacrest informed the Board members that Nebraska is one of only two states that do not allow CNMs to do home births.

This testifier provided data to show the Board members that CNM care is cost-effective, and that research shows that a planned home birth with the assistance of a licensed provider is safe. Ms. Seacrest informed the Board members that in some cases, "high-risk" women become "low-risk" under the care of a CNM.

This testifier informed the Board members that malpractice suits against CNMs are rare due to the manner in which they practice and the care they take to continually screen and monitor their clients.

Dr. Kellough stated that lay midwives provide services that are less costly than those of CNMs, and that this is why he opposed the CNM proposal

on the fourth criterion at the previous meeting. Margaret Allington asked whether CNMs would work with a doctor. Ms. Seacrest stated that this would depend on the terms of the practice agreement. Patricia McQuillan expressed the opinion that it is important to have a physician involved in the care provided by a CNM. Margaret Allington asked whether CNMs want to do home births. Ann Seacrest responded that this issue is consumer driven. Lisa Bradley responded that her conversations with the three CNMs in Nebraska indicated that one of them would like to do home births. Ms. Bradley stated that there are at least two more CNMs who would come to Nebraska to practice if they had the option of doing home births.

There being no further discussion the Board members decided to vote as to whether to approve the 407 Committee's recommendations regarding CNMs doing home births. Voting aye were Allington, Foote, Kellough, and Wempe. Voting nay were Balters, Christensen, Fitzgerald, Hirschbrunner, Maltas, McQuillan, and Polzien. Chairperson Weaver abstained from voting. By this action the Board members decided not to approve the recommendations of the 407 Committee on the CNMs which means that the Board members decided to recommend in favor of the idea to allow CNMs to do home births.

Recommendations of the 407 Committee on the Proposal

The members of the 407 Committee of the Board of Health met on November 5, 1993, to formulate their advice to the full Board of Health on the midwifery and home birth issue.

Chairperson Maltas began the review by reading from the report of the technical review committee on the subject. Chairperson Maltas then opened the meeting to those who wished to present testimony on the subject.

Lisa Bradley, a member of the technical review committee and a member of the Birth Awareness Group, came forward to make comments. Ms. Bradley expressed her support for the recommendations made by the technical committee, and then indicated that she was ready to answer questions from the 407 Committee members.

Dr. Chris Caudill asked Ms. Bradley about the Schoenmaker case and whether the technical committee recommendations would provide a means of addressing such problems in the future. Ms. Bradley responded that midwives who would be doing home births would only work with low-risk mothers and would follow strict protocols. Ms. Bradley also informed the 407 Committee members that the technical committee recommendations outlined backup requirements and made provision for the definition of standards of care.

Dr. Caudill asked what oversight there would be of those who would attend a home birth under the technical committee's proposal. Ms. Bradley responded that the proposal defines a licensing and regulatory process for attendants of home births, and added that midwives already adhere to strict protocols for the sake of safety. Carl Maltas added that the technical committee recommendation included provision for a Board of Examiners and a validated examination.

Dr. Caudill asked Ms. Bradley whether the technical committee

recommendation defines what qualifications a physician must have in order to provide backup for a mother doing a home birth. Dr. Caudill went on to state that some medical doctors don't do deliveries, and that any proposal in this area needs to specify that only those physicians who are prepared in this area of care and who do deliveries can provide backup. Ms. Bradley responded that lay midwives already see to it as part of their protocols that their clients get backup.

Karen Gourley, a direct-entry midwife, then came forward to make comments. Ms. Gourley stated that her group, the Nebraska Midwives Association, supports the recommendations of the technical committee, and that her group sees licensure for lay midwives as a workable policy for these practitioners. Ms. Gourley went on to state that members of her profession don't promote their services, and that most typically, clients initiate contact with a direct-entry midwife requesting assistance for a home birth that they are planning.

Karen Gourley informed the 407 Committee members that safety issues have been addressed by the technical committee in their report, and that her group supports the provisions in the report on medical backup, examinations, continuing education, and standards of care. Ms. Gourley added that some clients of lay midwives have expressed concerns about the idea of medical backup because of bad experiences with medical doctors.

Dr. Mark Kellough asked Karen Gourley about the malpractice insurance situation for lay midwives. Ms. Gourley answered by stating that the clients of a lay midwife take responsibility for the consequences of their decision to have a home birth. Ms. Gourley informed the 407 Committee members that the technical committee's proposal provides for an informed consent process that would make the client aware of the risks associated

with a home birth.

Ms. Gourley informed the 407 Committee members that lay midwives take a collaborative approach to their work, wherein the client and the midwife work together throughout the term of the pregnancy, and that the client is always involved in making decisions regarding their own welfare and the welfare of the child. Ms. Gourley stated that this collaborative approach mitigates against law suits by clients of a midwife.

Ann Seacrest, a consumer member on the CNM Advisory Council, informed the 407 Committee that CNMs often don't do home births, and that lay midwives are needed to fill the gap in this area of care.

Lori Heider, R.N., and a mother who has had a home birth, stated that she was far more satisfied with the care she received from her midwife than with the hospital care she received with an earlier birth.

David Buntain, J.D., and representative of the Nebraska Medical Association, presented testimony opposing the recommendations of the technical committee on the issues surrounding home births and midwifery. Mr. Buntain expressed agreement with a ruling by the Attorney General wherein the practice of lay midwifery was ruled to be an infringement on the practice of medicine. Mr. Buntain informed the 407 Committee members that NMA believes that home deliveries are not something that is needed, and that there is no evidence that the current system is a source of harm to the public health and welfare. Mr. Buntain then asked the 407 Committee members whether it would be good public policy to put babies at risk simply because some mothers want to have a home birth. Mr. Buntain expressed skepticism regarding the willingness of physicians to provide backup for mothers doing a home birth. Mr. Buntain stated that physicians would be concerned about being held liable in this situation.

Dr. Kellough then stated that the invasive procedures in a hospital can be a source of harm to a mother and her child, and that this is something that the 407 Committee members need to consider. Mr. Buntain responded that all things considered, a hospital is the safest place for birth to occur. He stated that the peer review process in a hospital provides an oversight dimension that cannot occur in a home setting. Mr. Buntain added that NMA believes that having a medical doctor directly involved throughout the term of a pregnancy is vital to protect both mother and child.

Mr. Buntain informed the 407 Committee members that hospitals are becoming more responsive to the wishes of mothers and their families as is demonstrated by the creation of birthing rooms that simulate a home environment.

Montie Shellenberger, R.N., C.N.M., and member of the technical review committee, then came forward to answer questions by the 407 Committee members. Dr. Kellough asked Ms. Shellenberger whether she would do a home birth if it were legal for her to do so. Ms. Shellenberger responded that personally she would not want to do this, but that there are CNMs in other states that do home deliveries, and that they have told her that they feel that they can do home births safely given clearly-defined backup arrangements. Dr. Kellough expressed concern that too few CNMs would be willing to do home births to meet the needs of families in Nebraska that want this service.

Dr. Caudill asked someone to describe how prenatal care occurs under the care of a lay midwife. Karen Gourley responded by describing the screening and monitoring provided by lay midwives throughout a client's pregnancy.

Lisa Bradley informed the 407 Committee members that there are studies

that show that birth injuries are fewer with home births, and that, on the average, babies have a better birth-weight and mothers are in healthier condition compared to what occurs with a hospital birth. Ms. Bradley informed the 407 Committee members that studies have shown that of those women who have had experience with both a hospital birth and a home birth, eighty-percent have expressed greater satisfaction with their home birth experience.

Dr. Caudill responded to Ms. Bradley's comments by stating that there would be a definite "self-selection" factor involved in the study described by Ms. Bradley. Dr. Caudill also stated that evidence that focuses exclusively on the feelings and wishes of mothers overlooks the question of what is good for the child.

Dr. Kathleen Bliese, President of the Nebraska Academy of Family Practice, came forward to testify. Dr. Bliese stated that she opposes the recommendations of the technical committee. Dr. Bliese stated that in her judgement there is no way to identify with any certainty who is "low-risk" and who is not. Dr. Bliese informed the 407 Committee members that in the years she has been practicing medicine she has seen pregnant women who fit the definition of "low-risk" who suddenly and unexpectedly began hemorrhaging and who would have died had it not been for the advanced technology available only in a hospital setting. Dr. Bliese stated that "when things go wrong, they go wrong very quickly" and that a few minutes can make the difference between life and death. Dr. Bliese stated that in such emergency situations, being in a home environment rather than in a hospital would significantly reduce the chances for survivability of both mother and child.

Dr. Duane Polzien asked Dr. Bliese for her opinion as to whether

physicians would agree to a backup role for mothers who want to do a home birth. Dr. Bliese responded that in her opinion most medical doctors would be too concerned about being held liable to agree to provide such backup.

Dr. Kellough responded to Dr. Bliese's comments by stating that it is a "sad day" when the members of one profession put themselves in a position to veto something regardless of what the rest of society might want. Dr. Bliese replied that physicians have legitimate concerns about liability and concerns about the safety of home births.

Janel Foote suggested that tort reform might be an answer to the liability concerns of physicians, specifically in the form of a "disclaimer of liability" for physicians who "sign on" to provide medical backup. Dr. Bliese responded that such disclaimers never hold up in a court of law, and that someone can always find a way to sue a physician.

Ann Seacrest expressed the opinion that medical doctors don't need to "sign on" per se, but merely do a physical exam to determine the extent of risk. Dr. Caudill responded that this scenario makes no provision for backup.

The 407 Committee members then took up the criteria of the credentialing review program pertinent to the issues raised by the review. The 407 Committee members decided to apply the scope of practice criteria to the aspect of the review pertinent to expanding CNM scope of practice to include home births, and to apply the criteria for new credentialing to make a recommendation on the aspect of the review pertinent to the proposal to license lay midwives.

The 407 Committee members decided to vote on the lay midwifery issue first. Dr. Kellough moved and Dr. Polzien seconded that the idea of licensing lay midwives satisfies the first criterion which in this case asks

whether there is significant harm to the public in the current situation of lay midwifery. Voting aye were Foote, Kellough, and Polzien. Voting nay were Caudill, and Fitzgerald. Chairperson Maltas abstained from voting. The motion carried.

Dr. Polzien moved and Dr. Kellough seconded that the idea of licensing lay midwives satisfies the second criterion which in this case asks whether this idea would cause significant new harm to the public health and welfare. Voting aye were Kellough and Polzien. Voting nay were Caudill, Fitzgerald, and Foote. Chairperson Maltas abstained from voting. The motion failed. By this action the 407 Committee members decided not to recommend approval of the idea of licensing lay midwives.

Dr. Polzien moved and Dr. Kellough seconded that the idea of licensing lay midwives satisfies the third criterion which in this case asks whether the public would benefit from this idea. Voting aye were Kellough and Polzien. Voting nay were Caudill, Foote, and Fitzgerald. Chairperson Maltas abstained from voting. The motion failed.

Dr. Polzien moved and Dr. Kellough seconded that the idea of licensing lay midwives satisfies the fourth criterion which in this case asks whether this idea is the most cost-effective means of addressing the issue of home birthing. Voting aye were Kellough and Polzien. Voting nay were Foote, Caudill, and Fitzgerald. Chairperson Maltas abstained from voting. The motion failed.

The 407 Committee members then took up the question of whether to expand CNM scope of practice to include doing home births. Dr. Fitzgerald moved and Dr. Caudill seconded that this idea satisfies the first criterion which in this case asks whether there is harm to the public as regards the current scope of CNM practice which prohibits CNMs from doing home births.

Voting aye were Fitzgerald, Foote, Kellough and Polzien. Voting nay was Caudill. Chairperson Maltas abstained from voting. The motion carried.

Dr. Fitzgerald moved and Dr. Caudill seconded that this idea satisfies the second criterion which in this case asks whether significant new harm would result from expanding CNM scope of practice to include home births. Voting aye were Fitzgerald, Kellough, and Polzien. Voting nay were Caudill and Foote. Chairperson Maltas abstained from voting. The motion carried.

Dr. Kellough moved and Dr. Caudill seconded that this idea satisfies the third criterion which in this case asks whether the idea of expanding CNM scope of practice to include home births would benefit the public. Voting aye were Fitzgerald, Foote, Kellough, and Polzien. Voting nay was Caudill. Chairperson Maltas abstained from voting. The motion carried.

Dr. Fitzgerald moved and Dr. Caudill seconded that this idea satisfies the fourth criterion which in this case asks whether the idea of expanding the scope of practice of CNMs to include home births is the most cost-effective means of addressing the issue of access to home birthing services. Voting aye were Polzien and Fitzgerald. Voting nay were Caudill, Foote, and Kellough. Chairperson Maltas abstained from voting. The motion failed. By this action the 407 Committee members agreed not to recommend approval of this expansion of CNM scope of practice.

Dr. Kellough stated that he did not believe that expanding CNM scope of practice would be the most cost-effective means of providing access to home birthing services, and that in his opinion the most cost-effective means would be the recognition of lay midwives.

Dr. Kellough then moved and Dr. Polzien seconded that the 407 Committee members take another look at how home birthing might be done, and that the 407 Committee members find a way to answer the concerns of those who seek

the services of lay midwives, and to find a way to make this option workable. Voting aye were Kellough and Polzien. Voting nay were Caudill, Fitzgerald, and Foote. Chairperson Maltas abstained from voting. The motion failed.

