

COMMITTEE ON HEALTH AND HUMAN SERVICES

May 5, 1993

LB 837

The Committee on Health and Human Services met at 12:00 p.m. on Wednesday, May 5, 1993, in Room 1510 at the State Capitol, Lincoln, Nebraska for the purpose of conducting a public hearing on LB 837. Present were Senators Wesely, Chairperson; Rasmussen, Vice Chairperson; Byars; Day; Horgan; and Vrtiska. Absent: Senator Dierks.

SENATOR WESELY: Could you please quiet down. I apologize. We had a floor debate and a motion to have Senators up on the floor, so a number of us on the committee had to be up. We just got done. The...the...usually we adjourn till 1:30. We are going to adjourn till 1:45, so we'll have about the same amount of time we had to consider the issues before us today. I want to welcome you to the Health and Human Services Committee of the Nebraska Legislature. I'm Don Wesely, Chair of the committee, from Lincoln. Members of the committee will be joining us late...a little later as they come down from the floor and I'll introduce them at a later point. Let me run through the preliminaries of how we plan to handle the hearing today. The bill before us is LB 837, introduced on behalf of the Governor, dealing with the issue of...of discipline, changes to the law as a result of a court action taken about a month ago. There's an amendment filed to that bill to deal with the issue of nurse midwifery and its legality in the State of Nebraska. That'll be considered the second half of the hearing. The time frame we're going to have is to...to...we obviously have about an hour and a half to go through this, so we don't have a whole lot of time. How many are here to testify on the first issue, and that is the unprofessional conduct discipline issue? I don't think we have too many testifiers. Two, three; and so that hearing should be rather brief. We'll have to limit everybody to five minutes. From that point, we will go to the midwife issue, and...and when we get to 1:45, that'll conclude the hearing on that issue. We'll get a sense of how many people want to testify on that bill at that time. With that, let me open on LB 837. Is Dr. Horton in here? Okay. Why don't you come forward, Dr. Horton. LB 837 is introduced on...by myself and Senator Baack and Senator Landis on behalf of the Governor, to deal with the question of unprofessional conduct, in response to a Supreme Court ruling that decided that, in a particular case involving Dr. Curry, that the language of the current statutes were unclear; and, in response to that ruling, to provide clarity to that particular statute. This bill was introduced, and it was drafted by the Health Department and, again, introduced on

behalf of the Governor. With that, I want to welcome Dr. Horton to open on LB 837. I apologize for the heat in here, and I don't know what the problem is. Too many people; too hot an issue.

LB 837

DR. HORTON: I know what the problem is. My Dad used to call it human furnaces. Right? Thank you, Senator Wesely, other members of the Health and Human Services Committee. Nice to be back here again today. I am testifying on behalf of the Governor and the Department of Health on LB 837, and...and testifying in favor. Some weeks ago, as you alluded to, Senator, the Supreme Court issued a decision that affects discipline of practitioners licensed under the Uniform Licensing Law. The Court indicated two things; first, that because of the way the unprofessional conduct statutes were written in Uniform Licensing Law, no discipline could be taken against a professional unless the conduct charged was either specified in the statute or defined by regulation; secondly, that standards are needed in the statute in order for regulations to be adopted. The court rejected using expert testimony in an individual disciplinary case, in order to determine that the conduct charge was unprofessional. While the Supreme Court has been asked to reconsider its decision, we believe its serious impact on the disciplinary system necessitates immediate legislative action. The bill that you have before you is an attempt to address the two issues. Firstly, the bill defines unprofessional conduct in order to provide sufficient standards to apply in adopting regulations and in making decisions in contested cases. The courts decision implies that the term "unprofessional conduct," standing alone, is not a sufficient definition to use to adopt regulations. We would urge that a definition be adopted to avoid challenge for lack of standards in the statute, and to provide a useful guide to everyone. The definition in the bill is similar to the standard that the Supreme Court itself has articulated in prior cases. It establishes accepted and prevailing standards of the profession itself as key in matters of practice and professional ethics, and recognizes fraudulent conduct or other conduct that is detrimental to the public as well. Some of the examples already in the statute illustrate the kinds of conduct that may fall within these categories. A number of these deal with business practices that are likely to deceive or defraud, and conduct detrimental to the public includes such things as violating an assurance of compliance. New

examples are included in the bill that go more to practice issues: sexual exploitation, keeping appropriate records of the services or care provided, and abuses related to prescription of drugs. Secondly, the bill makes clear that statute and regulation are not the sole mechanisms for defining unprofessional conduct. Our research indicates that courts widely recognize the futility of attempting to identify and define all the possible behaviors that would be unprofessional, and courts accept that unprofessional conduct can be further defined based upon expert testimony in contested cases. That was the approach taken by our Supreme Court before this case, though under former nursing statutes. In fact, a number of courts have indicated that when behavior is obviously unprofessional, not even expert testimony is needed. This is not to say that the attempt should not be made to further define unprofessional conduct. It should. While the Department has in place or in process regulations on this subject in a number of the professions, we are deficient in this area and need to work hard with the boards so that regulations are in place for all of them. Nonetheless, in order to have an effective disciplinary system, we need the flexibility afforded by the full array of usual methods available to an administrative agency to establish standards, and those include establishing standards for behavior through decisions and disciplinary proceedings; in other words, the use of expert witnesses and other contested cases. This is an important issue and we thank the committee for its consideration. We would...we would be happy to answer questions and to work with the committee to reach a solution that will provide sufficient standards for defining unprofessional conduct, and make clear that it can be addressed by statute, regulation, and by contested cases. We do know of a couple of issues. The Nebraska Medication Association has asked about putting in an emergency exception to the prohibition on prescribing dangerous or addictive drugs for family, but otherwise advised us of their support. We also support such an exception. Others have mentioned a possible special need for prescribing for family in areas where other physicians are not readily available. Thank you very much. I have copies of the testimony (Exhibit 1).

SENATOR WESELY: Thank you, Dr. Horton. Now the committee has been able to come down from the floor, and I'd like to introduce them. To far...Senator Connie Day from Norfolk; Senator Cap Dierks, I'm sure will be with us, from Ewing; we have Senator Jessie Rasmussen who is the Vice Chair, from Omaha; we have Gina Dunning, my Committee Counsel; and to my left, Laurie Vollertsen, the Committee Clerk; to her left,

Senator Dennis Byars from Beatrice; to his left, Senator Tom Horgan from Omaha; to his left, Senator Floyd Vrtiska from Table Rock. Are there questions of Dr. Horton on his opening? Yes, Senator Horgan.

SENATOR HORGAN: Dr. Horton, can you just briefly explain how we're in this situation? I mean, just...and I know you did that a little bit in your testimony, but...

DR. HORTON: Right. I...I think basically what...and I may need to call upon Legal Counsel here to make sure I get it totally accurately, but I think prior to the Supreme Court decision, basically, we have assumed that it was appropriate to...to consider defining unprofessional conduct in individual cases in court by the use of expert witnesses. We disciplined a physician and this...this discipline was appealed and the appeal went to the Supreme Court. The Supreme Court, basically, ruled that we could not use expert witnesses in the definition of unprofessional conduct; and so, because it wasn't specified in the law that we could do that, and so we are here to further, basically, shore up that...that what we consider a loophole to...to allow us to specify unprofessional conduct; and to further define unprofessional conduct; and add a few examples of what should be considered as an unprofessional conduct, but to go beyond that and to reiterate in law that we can use expert witnesses in the definition of...of ex...of unprofessional conduct in...in cases...

SENATOR HORGAN: And...the Court said that the current statute did not define unprofessional conduct and, therefore, it couldn't be...

DR. HORTON: Well, it defined it...it defined it...the definition of it did not allow for the use of expert witnesses in...in defining unprofessional conduct. Right.

SENATOR HORGAN: Thank you.

SENATOR WESELY: Further questions of Dr. Horton? Yes, Senator Rasmussen.

SENATOR RASMUSSEN: You said you added some things to clarify unprofessional behavior.

DR. HORTON: Right.

SENATOR RASMUSSEN: But...but is this going to limit you to this list?

DR. HORTON: No. No. There's a specific...right at the...line 22, Senator Rasmussen, on page 7. I don't know if we're on the same...we got the same kind of copy here, but it says, nothing in this section shall be construed to exclude determination of additional conduct that is unprofessional by adjudication in individual contested cases. So, this...this plus other lines in the bill allows us specifically to determine unprofessional conduct in specific contested cases by the use of expert witness.

SENATOR RASMUSSEN: And...and that determination is made by the Department of Health?

DR. HORTON: Which determination?

SENATOR RASMUSSEN: Of any other additional conduct.

DR. HORTON: No, that would be...it would be determined in ca...you know, basically...

SENATOR RASMUSSEN: It would have to go to case law?

DR. HORTON: Right. It would be used in case law, right. It would be in court.

SENATOR RASMUSSEN: Okay. All right. Thank you.

SENATOR WESELY: Other questions of Dr. Horton? Seeing none, thank you very much.

DR. HORTON: Thank you.

SENATOR WESELY: We'll now go to proponent testifiers on LB 837. Anybody wishing, yes, to testify in support?

PHILIP METZ: Good afternoon, Senator. I'm Philip Metz. I'm the current Vice Chairman of the Board of Medical Examiners, and I would like to take this opportunity to thank the Governor and you for helping us out of this problem that we are in. And, I am here to speak in support of this...these changes and improvements. I would agree a hundred percent with what Dr. Horton has said. There are two things in the bill, though, that I think could cause us grief in the future, as we fight the battles in...in our job of trying to protect people from the state and...and the state from poor practitioners. On line 12 on that same page that Dr. Horton just talked about, on pa...number 18, it said, failure to keep and maintain accurate records of

treatment or service, I'm not sure how we're going to be able to define accurate, and that looks to me like an area that's going to be a problem in trying to say what is accurate. I think there's no qualms in keeping records. That's appropriate. That's a...that's a minimal, but I don't know how we're going to define an accurate record. It's particular when it comes to various different drug activities. I can see that that's going to cause us a trouble and there'll be a fight over that, and we may lose the battle because of that. In the next section, the prescribing; Dr. Horton mentioned the problems of therop...of medications to a family member. That does not cause any trouble to the physicians in Lincoln and Omaha and the other areas. That is going to cause the trouble to the outstate rural physicians who... I know of several husband/wife physician teams, and if one of them gets hurt, and the other takes them to the hospital and fixes them, or has a heart attack and needs to describe...prescribe controlled substances for pain while they get transported for care, it's going to be a technical violation, a law for which there's no exception. So, that does kind of tie the rural practitioner hands, and I think there needs to be some way around that. The other question also on that, is how do you define family member? We have a hard enough time in our society trying to define what is family, or who is family. How far out do we go? I personally have operated on my parents, nieces, sisters, and my children. And, I've even sewn up my wife. And, that happens. You're in the positions where that has to be. So, if somebody is keeping the records and is prescribing them, as it says earlier in that thing, for an appropriate mechanism, there is no question with it. I think there is enough safeguard there to per...to provide protection for prescribing for a family member. And, it doesn't tie their hands. As to scheduled drugs for oneself, it's pretty hard to defend anybody doing that, and so I have no qualms with that. So, those two points, I think you need to take a serious look at but, otherwise, this...we need this because we have a hole. It's not just a loophole; it's a big dam out, because there's nothing we can do. We are...we're left right now with...gross negligence is the only way to discipline anybody. And, I appreciate your efforts and I appreciate the Governor's efforts in straightening this out. We, on the Board, are...are willing to assist in trying to fine tune things further down the road. But, we do need this now. Thank you. Any questions?

SENATOR WESELY: Doc...Doctor, thank you very much. Senator Day.

SENATOR DAY: Yeah, are you suggesting on this, maintain accurate records, that that part just comes out, or do you have an idea of how we could fix it?

PHILIP METZ: No, no. I think that...I think you have to have accurate. I'm just thinking maybe throwing the word accurate. I don't know how you're going to define...it's like trash. One man's trash; another man's treasure. Or, pornography; how do you define it? You know the coach's been saying, I don't know...I can't define it, but I know it when I see it. An accurate record, I don't know how you're going to define that. That's going to be an area for fights. Yes, they should keep records. So, that's...that word is about all. And, I don't know. I'm not an attorney, and my...my knowledge of what the English language says when it's written in law seems to be different from what it says when I read it. And, I think that you need to, you know, consider that in your...in your debate. But, I see that as a problem for us on the Board because I...you know, we fight over things that don't seem to be reasonable to fight over, but I see that we probably will end up with a fight over that.

SENATOR WESELY: Thank you. Other questions of Dr. Metz? Appreciate your input.

DR. METZ: Thank you.

SENATOR WESELY: Thank you. Next in support?

DAVID BUNTAIN: Senator Wesely and members of the committee, my name is David Buntain. I'm an attorney and I'm the registered lobbyist for the Nebraska Medical Association. We're here in support of LB 837, and I would just join in the comments that Dr. Metz and Dr. Horton have made about the suggested changes. I did want to mention just one other aspect of this, and I know your time is limited, so I...I'll keep this very short. This bill was introduced at this stage in the session because of a specific problem that was created by the Curry decision. There have been ongoing discussions during the early part of this year about other changes which need to be made to strengthen the disciplinary system for health care providers. We have proposed a number of changes to Senator Wesely and to the Governor's office, and I know that there are...is a group that is working on this. And, we certainly support, as we always have, any changes which need to be made in order to strengthen the system of physician discipline.

SENATOR WESELY: Thank you, David. Are there questions of Mr. Buntain? We appreciate your cooperation in the drafting of this bill and the work on the issue as well. Thank you. Anybody else wishing to support the bill? Anybody...anybody wishing to oppose this portion of the bill? Okay. We'll go to the next item.

SENATOR WESELY: Senator Rasmussen, colleagues on the Health and Human Services Committee, for the record, I'm Don Wesely, 26th District and introducer of the amendment to LB 837 (Exhibit ___) which deals with the particular problem of...of legality of lay nurse midwives. We've all gotten a lot of calls, and there's been a lot of discussion and...and one article about this particular issue. And, there's a lot of misconceptions about what's the status of things, and what we're trying to accomplish, so I'll try and go through as quickly as I can, the issue, and then we'll go to the testimony from individuals. I was around when we looked at the issue of...of midwives and what we should do as a state to allow for midwives. We...there was a two-year study back in the early 1980s what led to the introduction of LB 761 in 1984. A study had been done in 1983, and I was on the committee and part of that effort at that time. When we looked at the issue of...of midwives, we were looking at the question of how we should allow them to practice in the State of Nebraska because it was my assumption, and I believe everybody else in the Legislature that I am familiar with, that there was not a provision for midwives to be practicing in the State of Nebraska. There was an opinion requested in 1984 that reconfirmed that perception, that the practice of obstetrics is under the practice of medicine. The practice of medicine is not allowed to be practiced by anybody unless specifically provided for in statute. I don't know of any specific provision in any statute in our laws that allow for midwives to practice medicine or obstetrics. And, the decision was that we needed to allow for midwives to practice in the State of Nebraska, and I was supporting that. So, LB 761 was introduced. It was passed by the Legislature, to recognize that those individuals who have a nurse's background and additional training should be allowed to be certified as a nurse midwife, and then allowed to practice midwifery in the State of Nebraska. And, that was the status that I thought the situation was until not very long ago when it was discovered that, in fact, there were lay midwives practicing, that there was an incident where, during the a birthing process a life was lost and, eventually, action was taken against the...the midwife involved. The Court then decided, based on, as I understand

it, the Certified Nurse Midwife bill that we passed in 1984, that this individual could not be prosecuted as having illegally been practicing as a certified nurse midwife. She never said she was a certified nurse midwife. The problem is that the real issue was to be found in the Practice of Medicine statutes which indicate, once again, and I refer back to the AG opinion which clarifies it as well as you can, that obstetrics is a practice of medicine and, unless you are allowed in the statutes to...to do that, you cannot practice obstetrics. So, with that understanding, my concern was, and the dir...introduction of the resul...the amendment was to clarify what I thought was the situation and which I believe is the situation, that lay midwives are not supposed to be practicing in the state; that they never were allowed to be practicing in the State of Nebraska; and that what they've been doing, in...in my view, has been illegal in the State of Nebraska. So, for all those individuals that have been calling and complaining about this amendment, the fact of the matter is, we probably don't need this amendment because the Practice Act for Medicine already forbids this sort of activity. And, so I'll have to reconsider whether we even need to proceed with this amendment because I...I'm not sure at this point it's even necessary, and I'm investigating that further with some legal advice that I've requested. And...and so, that question is really one that I think needs to be focused on today. What is the current legal status of lay midwives? And, the second question is, what is the legal status of home births? There are additional questions that have been raised in a lot of the calls we've gotten, about the merits of lay midwives and the merits of home births. And, I believe, as I did back in 1984, that there is, in fact, potential merit there. I don't know that I can say that there is for sure. I'm not committing myself one way or the other, but the issue has been now raised, and there's a lot of interest. And, my feeling is that, under the powers that we have along with the Department of Health, we will be initiating a 407 review process of the issue of midwives, certified and otherwise, lay midwives, to look at their Practice Act of Certified Nurse Midwives, to look at the question of certifying lay midwives, to look at the question of home births and to analyze this issue over the course of the next few months and...and have legislation for 1994. So, for those who wish to testify on the issue and talk of the merits of midwives and home births, I'm not sure that this is the hearing and this is the point in time to raise those issues. In my...my view, those issues will be raised over the course of that study and reconsidered again next year. The real question that's before us is, what is the

current legal status of lay midwives in the state as a result of the court decision? What is the...does the decision affect in any way the practice of medicine and its restrictions? And, what should we do in terms of the legal status of this activity between now and the time at which we readdress the issue back in 19...in 1994 legislative session? That's a...that's as quick a summary of this issue as I can give, and a background to...to the concerns that I have. I'd be happy to answer questions.

SENATOR RASMUSSEN: Are there questions for Senator Wesely?

SENATOR HORGAN: Senator Wesely, certified nurse midwives can practice where?

SENATOR WESELY: They are allowed to practice un...under I think it's collaboration and consultation with a physician, I believe. They have to be in some way affiliated with a physician, I believe. And, they can practice in a hospital, but they are...there is not now, as I understand it, a...an ability for them to provide home births.

SENATOR HORGAN: There is not?

SENATOR WESELY: No. In fact, from what the statute, as I understand it, the Attorney General's opinion says, home births are not allowed to be attended by anybody but a physician in this state.

SENATOR HORGAN: And...and so...your...your intention with the amendment...or...or you...or you...I guess you said in your statement that you may not offer the amendment.

SENATOR WESELY: I don't know. That...that status that I have just expressed is a status into the practice of medicine and I don't know that we need to have any further clarification of it, and I'm looking into it that further because that is the current law and has been the law, and I'm not sure that any change is necessary to make that point. Unfortunately, there are others who have not followed that...the law, and...

SENATOR HORGAN: And, the recent court case where they found that the lay midwife was not guilty of...of what...not guilty of...

SENATOR WESELY: Uh-huh. The practice as a certified nurse midwife.

SENATOR HORGAN: So there...I guess the real question is, what is the regulation of lay midwives? Is that...

SENATOR WESELY: And, that gets back to the question of the practice of medicine and...and how does it affect the practice of lay...lay midwives. So, that's something we need to look into further. And, we are looking into it, but we don't have enough answers in the sort time we've had since this issue was raised. But, the.. I'm giving you the best information I've got at this time.

SENATOR HORGAN: Have you sought an Attorney General's Opinion?

SENATOR WESELY: Yes, uh-huh.

SENATOR HORGAN: And...but, you haven't gotten it yet?

SENATOR WESELY: It re...hasn't been returned yet, no.

SENATOR HORGAN: Thank you.

SENATOR RASMUSSEN: Are there other questions? Senator Vrtiska.

SENATOR VRTISKA: Going back to the issue that you discussed about the particular case you talked about, and I guess most of it read it; you're saying that there was no action taken against this person because, in fact, the courts decided that it was not illegal?

SENATOR WESELY: No, I'm not saying that at all. I'm saying that...that I...in my view, they...they used the lon...wrong law to prosecute this individual. They needed to go to the Practice of Medicine and indicate that what was being done was illegal, not...not the Certified Nurse Midwife Law. That seems to be how they applied it and, again, we're looking into exactly what transpired. But, from the information I've gotten, that's my impression.

SENATOR VRTISKA: But, you...but you said to Senator Horgan, you're at this point waiting for an opinion to be handed down in regard to that...not that particular case, but in general whether this is...

SENATOR WESELY: Right, uh-huh, if anything's changed since the previous opinion that was in 1984.

SENATOR VRTISKA: Okay. Thank you.

SENATOR RASMUSSEN: Are there other questions? I would one, Senator Wesely. Do you know what the logic was for not allowing certified midwives to do home births?

SENATOR WESELY: It was...there was...excuse me... The decision was, at that time, to try and open up the practice of midwifery because, at that time, we felt it wasn't allowed at all. We wanted to provide for...for midwives, and I do recall that, evidently in the discussions, home births were...were not felt to be a safe practice for anybody but a physician. Now, people can disagree with that, and then that will be something we'll look at over the course of the...the next few months. But, specifically, even with that high level of training, the question of home births was not felt to be a safe thing to allow for certified nurse midwives.

SENATOR RASMUSSEN: And, I guess I didn't go back and look at the statute, but it...it's not by deletion, but it's by actual wording that they cannot attend home births?

SENATOR WESELY: Oh, yeah, which gets us into the dilemma. If...if the court ruling stands without recognition of the practice of medicine, then you have a certified nurse midwife that has exceptional training, not being able to do home births, while a lay midwife, without any standards of training in any statute, being able to which, obviously, is illogical.

SENATOR RASMUSSEN: Thank you. I see no other questions. Are there proponents? Are you in favor of this amendment?

(TESTIFIER) No, I'm sorry.

SENATOR RASMUSSEN: Then, we'll take proponents first.

DAVID MONTGOMERY: (Exhibit 2.) Senator Wesely and members of the committee, my name is David Montgomery, and I'm testifying today in behalf of the Nebraska Department of Health. The Department supports this amendment because it restores what we understand to be the original purpose of the Nurse Midwife statute. At the time this statute was drafted, and during the time since it was enacted, the Department has considered midwifery to be part of the practice of medicine and of nursing. Therefore, any person other than a physician or a certified nurse midwife who practiced midwifery would be deemed to be in violation of the practice act of one of these fields. The passage of the

Nurse Midwife Practice Act of 1984 was not intended to change this situation, except to extend the legal practice of midwifery to certified nurse practitioners who have appropriate training. Now, the recent court case has called this interpretation into question, and new legislation may be needed in order to continue to administer this section of the statute. The ruling has created a scenario in which unregulated persons appear to be allowed to assist with home births, so long as they don't present themselves as being certified nurse midwives, but yet those same acts are denied to certified nurse midwives themselves, just as Senator Wesely pointed out. The Department, therefore, supports this amendment as a short-term means to clarify the legal environment surrounding midwifery. Now, this support does not necessarily mean that the Department endorses the status quo with respect to midwifery. The existing statute was enacted in 1984. That was one year before the Regulation of Health Professions Act, LB 407, was put into place. So, the issue of midwifery has never been really examined through the legislative review process that's been set up. Issues of who can best perform midwifery services, where they can be best performed, and how they should be regulated, have never been subject to the analysis and evaluation that occurs under the 407 reviews. Maybe it's time that we did that. To this end, the Department is willing, if the Legislature so desires, to convene a 407 review of midwifery services in Nebraska. The review could look at the need for midwifery services, the level of education and training necessary to deliver such services safely and potential regulatory mechanisms for midwifery services. Pending the conduct of this review and any resultant statutory changes, the Department supports this amendment before you today, to regulate midwifery in the manner that was understood to pertain before the Lancaster County Court ruling. Thank you, and I'll be happy to attempt any questions that you might have.

SENATOR WESELY: Thank you, Dave. Senator Rasmussen.

SENATOR RASMUSSEN: Dave, do you think if the prosecution would have laid out the case in the context of practice of medicine, the ruling would have been different?

DAVID MONTGOMERY: Well, Senator, I'm a bureaucrat, not an attorney so I...I hate to hazard an opinion on that. But, certainly, that...that would seem to have been the more logical course to pursue. And, that statute seems to be the one that really pertains here. Now, no one to my knowledge ever maintained that this individual passed herself off as a

certified nurse midwife. The issue was whether or not what she was doing was the practice of medicine.

SENATOR RASMUSSEN: So...so the question still remains, as Senator Wesely implied, whether or not there's any need for this amendment, depending upon the definition of...of how you should proceed in court?

DAVID MONTGOMERY: Exactly. As in so many other cases, the state statute in a word says specifically that midwifery is denied to anyone other than a physician and surgeon. It's a process of interpretation of the Medical Practice Act, based to a large extent on the Attorney General opinion that was received in 1984. That, I believe, you have copies of. So, this amendment would, to some extent, clarify the situation. It would not necessarily change the interpretation what many people believe to pertain already.

SENATOR RASMUSSEN: One other question. Were you around when this law was put together in 1984?

DAVID MONTGOMERY: Yes, I was.

SENATOR RASMUSSEN: Was there a discussion or awareness at that time of the distinction between direct entry midwives and certified midwives?

SENATOR WESELY: Yes, there was.

SENATOR RASMUSSEN: Is there a reason why that was not addressed?

DAVID MONTGOMERY: The group that drafted the legislation, and I'm relying here on a...an increasingly faulty memory, looked at the issue of midwifery as one that was currently not permitted at all in the State of Nebraska except under the Medical Practice Act. The intent of the group was to write legislation that would open the practice up to persons who met particular qualifications. So, there was an underlying assumption that direct entry or lay midwifery was already not permitted practice. And, further than that, there was not a whole lot of discussion of it. That's what I'm saying. The issues really have not been discussed.

SENATOR RASMUSSEN: Okay. Thank you.

SENATOR WESELY: Senator Horgan.

SENATOR HORGAN:: Dave, does the Department of Health have

the responsibility for regulating or having oversight of, I guess, births in the State of Nebraska?

DAVID MONTGOMERY: No, birth is a natural procedure. The Department only regulates practices.

SENATOR HORGAN:: I mean, if...if I go the hospital with my wife, and we have a child, and that birth is registered, then, with the county? Is that right?

DAVID MONTGOMERY: The birth is registered either with the county or the state. I think the issue is, who can assist with the birth? And, that's where the practice of medicine comes into place.

SENATOR HORGAN: What I'm trying to get at is, how has this been going on since, at least 1984, without the Department or somebody in state government knowing about it?

DAVID MONTGOMERY: The Department operates on a complaint received basis. We don't go out and try to determine violations that occur on our own. We don't have the resources, the inclination, or the temperament to do that.

SENATOR HORGAN: Well, when somebody has an at-home birth, and a birth certificate is then sought, there's no attending physician, and the birth was at home, who...who looks at that. I mean, who would then become suspicious?

DAVID MONTGOMERY: I don't think anyone would become suspicious. The Bureau of Vital Statistics would have to file the birth certificate. And, I'm not an expert on their statute, so I'd have to call on someone else in the Department to interpret how they would deal with a certificate like that. We're dealing with such a small number of them, but I'm sure there are procedures in place. I'm personally not familiar with them.

SENATOR HORGAN: But, it would not be the Department of Health that would...

DAVID MONTGOMERY: It...it would be the Department of Health that files the certificates.

SENATOR HORGAN: And wouldn't...and, it would not be suspicious to you that there was no attending physician and the birth was not done in a hospital?

DAVID MONTGOMERY: I...I can't speak to that, Senator. I

just don't have the information. I'm sorry.

SENATOR HORGAN: Who could speak to that?

DAVID MONTGOMERY: I will see if... Pat, Dr. Horton, is... We have someone from our...familiar with our Vital Statistics statutes here. I don't think we have anyone today who can...can deal with that. We will get that information to you. Yes.

SENATOR HORGAN: Could you get back...could you get back...I mean, it just seems odd to me that people are reporting births at home without an attending physician. Somebody in state government ought to be interested in that.

DAVID MONTGOMERY: We...we will get the information to you, Senator.

SENATOR WESELY: Senator Horgan, out of 24,000 births, 78 were delivered at home or en route...or is it en route? I'm not sure if that's counted.

DAVID MONTGOMERY: Not...not in a hospital.

SENATOR WESELY: Not in a hospital, so...

DAVID MONTGOMERY: And, that includes en route deliveries.

SENATOR WESELY: So, out of 24,000, 78 is not a large...

SENATOR HORGAN: But, wouldn't you...I mean, 78 you would won...you would wonder why not in a hospital, wouldn't you?

SENATOR RASMUSSEN: Except, couldn't it be an emergency situation, too?

DAVID MONTGOMERY: Yes.

SENATOR RASMUSSEN: So, there would be no distinction between those that were by design, planned out to be in-home, I suppose.

SENATOR HORGAN: Yeah, but you would have a phy...you usus...if it's an emergency situation, you can still have a physician usually. A physician would sign the birth certificate. I mean, these are birth certificates with no physician signing them, right?

DAVID MONTGOMERY: Uh-huh. I can't speak to that, Senator,

I'm sorry. I'll...I'll get the information.

SENATOR WESELY: All right. Thank you. Senator Vrtiska.

SENATOR VRTISKA: I want to direct a question to you, Senator, if I might. I guess I'm curious. You indicted in your testimony, or in your introduction, that you didn't intend to deal with this Amendment 1753 at this time. Is that correct?

SENATOR WESELY: I said that I...we may not need the amendment. We're not certain yet, but it may...many not be necessary.

SENATOR VRTISKA: Well, I guess my question is, are we going to have a full-blown hearing on this amendment to determine whether you're going to use it, or are we not?

SENATOR WESELY: Yeah. That's right. That's part...yeah, that's why we're here to discuss whether we even need the amendment.

SENATOR VRTISKA: Unless we get the legal opinion that you have indicated, I...I can't understand. Well, I'm not going to...I'm not going to pursue that. I...I was just curious, though, what the next step was going to be, if you're going to follow through and if we have... If we don't have a legal opinion yet, it seemed to me we're jumping the gun, so to speak, but I'll...I'll...I'll abide by whatever you want to do.

SENATOR WESELY: Okay. Thank you. I...I think that's what the Department is indicating, to a degree, that their assumption is the same as mine, and so, unless we hear differently from the legal people, there may not be...be any need for the amendment. Other questions? Thank you, Dave. Any...anybody else in support of the bill?

DAVID BUNTAIN: Senator Wesely and members of the committee, my name is David Buntain. I'm here representing the Nebraska Medical Association, and we...we concur in the remarks of Senator Wesely and...and Mr. Montgomery. It's the position of the Nebraska Medical Association that home delivery by anyone other than a physician is the unauthorized practice of medicine. And, that's been our understanding of the law, certainly since 1984, and really before that. The recent decision that's received some publicity has cast some doubt on that, and we appreciate Senator Wesely bringing this to the attention of the

committee. We would...we...obviously, there is a lot of public interest in this issue even though, as Senator Wesely points out, that the number of...of births outside of the hospital in a given year is a...is a very small number, and we would certainly be willing to work with...with the committee that's appointed under the 407 process, to explore the issues that are...that are involved here.

SENATOR WESELY: Thank you, David. Are there questions of Mr. Buntain? Thank you. Appreciate your testimony. I ask Joanne Bronson to...to come forward as a...to answer some questions, following up, I think, on Senator Rasmussen on the home birth issue. You might want to talk about what...what is now required under the Certified Nurse Midwife Act, and the training, and then what you're able to do. I think that would help clarify Senator Rasmussen's concerns.

JOANNE BRONSON: I'm Joanne Bronson. As he said, I'm Lincoln's certified nurse midwife. To be a certified nurse midwife under the Practice Act right now, you have to have a RN degree, and then you have to go to a ACNM which is the American College of Nurse Midwife's approved school of nurse midwifery. And, then you have to pass a national certification exam and then apply for licensing through the state. And, the Practice Act does specify that I have to have a practice agreement with a physician, and I have to have written protocols that are available to anyone that wants to see them at any time, that covers anything and everything that I do. And, all of my deliveries are required to be in the hospital.

SENATOR WESELY: Okay. Question...questions, yes. Senator Horgan.

SENATOR HORGAN: Just one question. When you...when you're practicing midwifery in the hospital, is a...is a physician in attendance with you?

JOANNE BRONSON: No.

SENATOR HORGAN: So, you...

JOANNE BRONSON: He is readily available to me if I identify that there's a problem that needs a physician. But, as they pointed out, birth is normal 99 percent of the time, so most of the time I do not need a physician.

SENATOR HORGAN: So, in most...if...if a patient of yours

goes to the hospital, they call you, and you come to the hospital, and deliver the child?

JOANNE BRONSON: Yes. Yes. I have admitting privileges at St. Elizabeth Hospital.

SENATOR HORGAN: Okay. Thank you.

SENATOR WESELY: Other questions? Yes, Senator Rasmussen.

SENATOR RASMUSSEN: Joanne, I know we don't have birthing centers here in Nebraska, but...but if we did, as some states do; not a hospital, but a birthing center; would you, under Nebraska Practice, be able to deliver under those circumstances?

JOANNE BRONSON: Only if they amended the Nurse Midwifery Amendment to include birth centers.

SENATOR RASMUSSEN: Okay, because it...it's specific to hospitals, right? Says it must occur in the hospitals. Now, let me put you on the spot? Would...would you like the opportunity, or do you think you should have the opportunity, to attend home births?

JOANNE BRONSON: At this point in my career, no.

SENATOR RASMUSSEN: Why is that?

JOANNE BRONSON: Because I'm a new graduate. I'm new at this, and I don't feel that I have enough experience to do a home birth and manage the things that can go wrong at home.

SENATOR RASMUSSEN: So, it's a matter of readiness for you?

JOANNE BRONSON: Correct.

SENATOR RASMUSSEN: Would you like that opportunity to be available to you as part of your practice at some point in time?

JOANNE BRONSON: At some time in the future as long as I could have physician back-up. Yes.

SENATOR RASMUSSEN: Okay. Thank you very much.

SENATOR WESELY: Other questions? I find it interesting with...with the fact that you're an RN; additional training, you pass the exam, and still an uncertainty about...the home

birth situation. What's your comfort level with...with the prospect of lay midwives without maybe being even a nurse, or having any particular training, having the ability to be able to perform home births?

JOANNE BRONSON: I feel that they should have to pass the same types of things that I have to pass. There are states that do require certification of lay midwife, that have protocols and back-up. I have, as I've pointed out to you, some very good friends that are lay midwives, and they do have those things in place. And, I would like to see that come to Nebraska. I'd like to see if lay midwives are going to be practicing here, that they be legal and allowed to come to the hospital when something does go wrong. I feel right now it is very unsafe to send a patient to the hospital without going with her, and telling us what's gone on, for the people that are taking over the case.

SENATOR WESELY: Any other questions? Thank you very much for joining us. We appreciate that. Anybody else in support?

MARY HELEN ELLIOTT: Senator Wesely and committee members, I'm Mary Helen Elliott. I'm speaking on behalf of the Nebraska Nurses' Association, in support of Senator Wesely's desire to protect the public. As nurses, we are concerned that childbearing women have access to, and receive, high quality safe care. Certified nurse midwives can and do provide that care, as evidenced by a well-publicized 1986 study and others, that found certified nurse midwives managed pregnancy as safely as physicians. One of the problems in Nebraska is the lack of numbers of certified nurse midwives in the state, to deliver the safe care that is desired by women. The Certified Nurse Midwifery bill was passed in 1984 and, only recently here, have there been two in practice, one in Lincoln and one in Omaha, besides governmental facilities. NNA members would like to address the lack of numbers and barriers to the practice of certified nurse midwifery in ongoing dialogue over the summer months. Barriers that need to be addressed are third party payor reimbursement, prescriptive authority, and home deliveries. I would also like...I do have copies of my testimony (Exhibit 4), and I would like to also give you some information published by the Nebraska...or the American Nurses Association regarding certified nurse midwives (Exhibit 3). And, I did want to clarify. Senator Rasmussen, you had asked about birthing centers, and the Nurse Midwifery statute does specifically allow certified nurse midwives to practice in certified health care

facilities. So, if a birthing center was identified, or was certified by the state as a health facility, they could practice in a birthing center. I assume you're talking about like free-standing birthing center.

SENATOR RASMUSSEN: Right. Yes, uh-huh. Thank you.

MARY HELEN ELLIOTT: Yes, uh-huh. The only thing that's specifically exempted is home deliveries.

SENATOR WESELY: Okay. Questions of Mary Helen? Thank you. Appreciate your testimony. Anybody else in support of the amendment? If not, we'll go to opponents of the amendment. You'll have till about 1:45. If you could limit your testimony to a couple or three minutes each, I think more people would have the chance to testify. We have no set order, so... We do need people to sign in if you do plan to testify. I understand there's been a sign-in sheet for those who may not get the chance to testify, to express your support or opposition, so... That's happening and you can begin.

KAREN AMEN-JENSEN: Shall I begin and then sign in afterwards?

SENATOR WESELY: Yes, you may.

KAREN AMEN-JENSEN: Senator Wesely and members of the committee, I am Karen Amen-Jensen, a Lincoln resident, a third generation Nebraska wife and mother. I live my life like most of you, in many different arenas, but the role in which I address you today is that of one of the co-founders of Nebraskans for Certified Nurse Midwives. It was exactly ten years ago this summer that Ann Seacrest, who really began this movement, and I, organized Nebraskans for Certified Nurse Midwives. We had a public hearing in the room right down the hall, and found great interest in making nurse midwives legal. And, I did have some fairly carefully prepared testimony but, because Ann and I were sitting there at the table when the negotiations took place, I drafted the legislation, Ann and I together; worked with Senator Shirley Marsh; so I'm going to have the history for you as best I can remember; and some of the memories are quite vivid; on the intent of this legislation and on whether home births were addressed or not. For nearly two years, we thoroughly researched nurse midwifery; we disseminated information; we coordinated the broad-based statewide organization; and we drafted the legislation and lobbied for it. And, then in the end, in the final reading of the bill, had to directly

negotiate with the Nebraska Medical Society who, at that point in time, came forward, deciding that there were a few things they wanted changed in the legislation in order for them to support it, and not actively work against it. And, one of those things was the issue of where a certified nurse midwife could practice. We sat around a conference table in Senator Marsh's office. I was there; David Buntain was there; Bob Shippiro (phonetic), and Herb Reese from the Medical Society were there; Senator Marsh and her legislative aide. At that point in time, we did not discuss the pros and cons of the home birth. The safety of home birth was never an issue in the Nurse Midwife legislation. It was never brought up, and it was never researched. We did not have the time to delve into lay midwifery and into all the issues of home birth but, rather, we had as our primary concern getting CNMs legalized in Nebraska. I point out, also, the amount of time it took us even to get to that point because the primary reason that I oppose this amendment is that it was done in haste, as a quick reaction to a court case. And, I recognize, from my experience, the time that is needed for good public process, for an open and a fair and an unbiased dialogue on home births and on the practice of midwifery. And, my concern is that if this amendment were...I...I understand now, Senator Wesely, that your strategy is to say that you're deleting the amendment and going back to the original Medical Practice Act, but anything that would outlaw lay midwifery and home birth, at this point, I feel, would be a great mistake and...and made in haste without a full knowledge of the facts and the implications. I've talked to you a little bit about the intent. I've talked to you about my opposition to any amendment like this. I think rather than read any more of my testimony, I'd be happy to answer any questions, either now or... I do have my prepared testimony with my business office and...and phone number, and you could call me if you wanted further clarifications.

SENATOR WESELY: Thank you, Ms. Jensen. Other questions? Do you have a handout or something of your testimony?

KAREN AMEN-JENSEN: A handout? Only my own testimony on...on the background.

SENATOR WESELY: Okay. Senator Horgan.

SENATOR HORGAN: So, it's...it's been your understanding since the time the bill was enacted that lay midwives were permitted?

KAREN AMEN-JENSEN: It was my understanding that lay midwives were not an issue when we did that legislation, that it was... Initially, when we began doing our consensus building and...and our looking at information, we realized it was such a gigantic topic that we needed to narrow down on one thing. And, quite frankly, when we were negotiating with the Medical Society, the issue of lay midwives did not come up. They may have been thinking it, but they never articulated it verbally or on paper, nor the safety of home birth. That was not examined.

SENATOR HORGAN: Do...do you perform midwifery then?

KAREN AMEN-JENSEN: No, I'm a business consultant. I'm a small business owner, and I employ about 20 people. So, I have moved somewhat away from active involvement in child birth...

SENATOR HORGAN: Okay, thanks.

SENATOR WESELY: Other questions? I think you're...Karen, I think you're making some semantical gyrations here because we didn't discuss lay midwifery because, as I said, it was all...the assumption of us that it wasn't allowed. And, the question was, how far do you go forward and the decision was not to go so far forward that lay midwives and home births were allowed. Otherwise, it makes no sense why you would put such restrictions on a certified nurse midwife when...

KAREN AMEN-JENSEN: The bill on first round was open enough to allow home births, and it was not until the final reading...and I think David is here...that the Medical Society came out in opposition, and deleted it.

SENATOR WESELY: But...but, you're talking about the issue of...

KAREN AMEN-JENSEN: Lay midwives versus certified nurse midwives.

SENATOR WESELY: ...Lay midwives didn't come up and the reason it didn't come up is because you were not pushing to have them legalized. And, we had all assumed that they were not legal to begin with. So, that's the reason it didn't come up.

KAREN AMEN-JENSEN: I don't think our group assumed they weren't legal. I'm...I'm quite sure we didn't, and we were the ones that asked for the Attorney General's Opinion,

initially, to have that clarified.

SENATOR WESELY: Uh-huh. And, what did the Attorney General Opinion say?

KAREN AMEN-JENSEN: And, the detail... I don't have that in front of me, and I'm sorry. I need to see it in writing.

SENATOR WESELY: Said they weren't legal.

KAREN AMEN-JENSEN: It did say they were illegal? It said that?

SENATOR WESELY: Yeah, they...they were under the practice of medicine. They were not allowed to be.

KAREN AMEN-JENSEN: I would need to re-read that.

SENATOR WESELY: So, I...I think your memory is a little faulty, and you might want to go back through on some of the...

KAREN AMEN-JENSEN: Well, I don't think my memory's faulty on the events that took place. But, yeah, I...I will acknowledge I don't have the Attorney General's Opinion.

SENATOR WESELY: No...on...on that specific I agree. But I think the context, the broader context of...of where the Legislature was and where the issue was in a broader context, I think...

KAREN AMEN-JENSEN: If they were there, and if the committee was there, Senator Wesely, you all never said that to us in writing or in...in...verbally that you were trying to outlaw lay midwifery. It...if...it...

SENATOR WESELY: We didn't have to try and outlaw midwifery. It was not legal to begin with. You can't outlaw something...

KAREN AMEN-JENSEN: Nor was certified nurse midwifery. Yeah. It...it...yeah. We...you're right. We could go round and round about this.

SENATOR WESELY: I...I don't know why, but... Other questions? Thank you. Appreciate your testimony.

KAREN AMEN-JENSEN: Okay. Great.

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ALICE MAY: I do have a copy of my testimony (Exhibit 5) and I will be referring to the last page of it especially. Thank you, members, for having this hearing. My name is Alice May. I am an RN student in Norfolk, Nebraska. I'm a constituent of Connie Day. I am member of the Student Nurse Association and am active in it. I met Senator Wesely at the Nurses Day at the Legislature, and I would like to thank you for the way you have supported nursing issues that have come out...come up over the past many years. I am also the mother of three boys, the last two of which have been born at home, utilizing the services of a direct entry midwife. I am neutral on LB 837; however, I am against this amendment. This amendment will effectively outlaw the practice of the age-old profession of direct entry midwifery. Direct entry midwifery midwives are both needed and they're wanted in this state. A number of other states have recognized the difference between direct entry midwives and certified nurse midwives; have recognized the need for the availability of direct entry midwives and certified nurse midwives. And, they support the practice of both. As a student nurse, and with my experience with direct entry midwives attending my births, I feel I have unique insight into the issue of training of nurse and non-nurse midwives. When referring to your gray booklet that I was told was given to you with the title "Midwifery," you can read on page 143 a discussion concerning, should midwives be nurses. I, as a member of the Student Nurse Association, and since I'm in nursing school, I love the nursing profession, and I'm not at all against it. However, in this discussion, it states that the international definition of a midwife, adopted by the International Confederation of Midwives and the World Health Organization, does not require midwives to be nurses. In fact, in Holland, which is the industrialized country with the largest number of home births attended by non-nurse midwives, special attention is given to keeping these two professions of direct entry midwifery and certified nurse midwifery distinctly separate. It goes on to emphasize...this booklet that you should have goes on to emphasize that, while it has been demonstrated that trained midwives attain better results, there have never been any indications that such training needs to include a full course in nursing education. My nursing education, for example includes study in many areas that is not at all applicable to midwifery, such as geriatrics, nursing care, surrounding surgical procedures, and hospitalization. For the past two years, the American College of Nurse Midwives and the Midwives Alliance of North America, which represents both nurse and non-nurse midwives, have been participating in meetings sponsored by the Carnegie Foundation, to

establish what a midwife is and what constitutes proper training. Their last meeting was held February 12-14 of this year, and the ACNM and MANA have reached formal agreement regarding the definition and training of a certified midwife; not certified nurse, just certified midwife. Both of these organizations recognize legitimacy of non-nurse routes to training. Their joint statement, which is the last page of my testimony, is entitled "Midwifery Certification in the United States" and it deals with many of these issues. I think it'll clarify some things for you. In addition, the second section of your bag booklet that we distributed, there are several pages addressing the practice of non-nurse midwifery in the United States. Other states, such as Washington, have recognized non-nurse midwifery as safe and effective. After considering all this information, I firmly believe that the practice of direct entry midwifery in our state should not be prohibited. Direct entry midwives are meeting a crucial need for health care in our state, and the demand for direct entry midwifery will not disappear. Many...many more women and spouses, husbands, families, would choose home birth as an option if the issues were more clearly defined, and if there were more direct entry midwives available. There is...it is very difficult to find them in many instances. I urge you to vote against this amendment that would criminalize the time-honored profession of direct entry midwifery in our state, and eliminate the rights of citizens of Nebraska to choose the perinatal health care provider they wish to employ. Thank you. I'll be happy to answer any questions.

SENATOR WESELY: Thank you, Ms. May. Are there questions?
Senator Rasmussen.

SENATOR RASMUSSEN: I...I just have one. You...you made the remark about a concerted effort to keep distinct the nurse midwife and direct entry midwife. Why would that be? Why...how would they be different in terms of what they would be doing and...and, therefore, why would you want to keep them separate?

ALICE MAY: Certified nurse midwives are trained under the medical model of child birth. Direct entry midwives are trained under the midwifery model. The midwifery model differs from the medical model in their approach, their view of birth, the...the amount of technology they believe is necessary. Not an...I would like to say, not all certified nurse midwives, even though they are trained under the medical model, believe that birth, you know, is dangerous

and needs to be in a hospital and has to have a lot of technology. The training routes are different. Apprenticeship and training, direct entry midwives, to handle home birth is a big difference.

SENATOR RASMUSSEN: Yeah, I...I see that distinction and I... So, I'm wondering why...why anybody would become a...a...go through the route of becoming a nurse midwife as opposed to a certified midwife, that would not require the nursing background. Why would they do that?

ALICE MAY: A lot of that is because of what's available. If...if I want to become a midwife and the only route available that is...for my education and for me to perceive it as being legal, is going to drastically influence...

SENATOR RASMUSSEN: Let's...let's say there's...there is both options available, why...why would anybody become a nurse midwife? Why would...how would their practice...what they would be doing, be any different than a certified midwife who is not a nurse?

ALICE MAY: That decision is their choice, you know, as far as which route they want to take. They may know somebody; they may feel more comfortable with the medical model; they may feel more comfortable with...with the midwifery model.

SENATOR RASMUSSEN: So you would...you're arguing, keep the distinction primarily on the basis of options available, not that one is a better route to go than the other?

ALICE MAY: Correct.

SENATOR RASMUSSEN: Okay. Thank you.

SENATOR WESELY: Senator Horgan, then Senator Vrtiska.

SENATOR HORGAN: You said you had two children with a lay midwife, at home?

ALICE MAY: Uh-huh.

SENATOR HORGAN: Did...did you use a physician for prenatal care or anything?

ALICE MAY: With my...with my second child, we were living in Iowa. Our midwife was from Illinois, and I had him in Missouri. And, yes, for part of that pregnancy, I used a physician in Norfolk because we had not moved to Iowa yet.

For the remainder of my pregnancy, I used a...a direct entry midwife in Illinois who had two doctors who backed her up, and had lab privileges at a hospital. And, also at my birth, the physician was there, not to assist, but just to be available. My second one, I did not have prenatal care from a doctor. I had it totally from a direct entry midwife and, although I had two physicians, a general practitioner and an ob-gyn backing me up in case I needed to transport, there was no doctor at my third birth, which was my second home birth.

SENATOR HORGAN: And, where...where was this? Your second child was born where?

ALICE MAY: My second child, which was my first home birth, was in Missouri. And, my third one was in Norfolk.

SENATOR HORGAN: So, you had a...you had a child at home with a lay midwife in Norfolk.

ALICE MAY: Uh-huh.

SENATOR HORGAN: And, she was affiliated with two physicians?

ALICE MAY: No, she was not affiliated with the two physicians. I sought that back-up myself, and that..

SENATOR HORGAN: But, your...your physicians knew that you were having...

ALICE MAY: Yes.

SENATOR HORGAN: ...were utilizing a lay midwife?

ALICE MAY: Yes.

SENATOR HORGAN: And...I'm curious about the question of insurance. Is...do lay midwives...can you submit their bills to your insurance company?

ALICE MAY: In some states you can. In the State of Arizona, direct entry midwives, lay midwives; the term is interchangeable; are reimbursed by Medicaid. Other states, there is none. At that time, although my husband has two Bachelor Degrees, he was unemployed. And, with...this is my third one, we were on Medicaid, and we choose to use our Earned Income Credit money, and some money we were able to scratch together, to pay our direct entry midwife because

she was not reimbursed by Medicaid, and because we felt like that was such an important choice for us, that we...we desired to do that.

SENATOR HORGAN: Okay. And, then, the last question. On the birth certificate, did your physician sign the birth certificate? Who signed it?

ALICE MAY: This...this is interesting. It depends on who your midwife is, and who, you know, what area you're in. My husband signed...no, I think we signed no attendant. The...the State Health Department...we had a little bit of trouble with the birth certificate. They wanted a...because we chose not to put the direct entry midwife's name on the birth certificate, for her protection because of the gray...gray state of whether they're legal or not, and not desiring to create any problems, the State Health Department required a letter from our physician at the newborn check-up five days later, stating that he had seen me when I was pregnant. I'm no longer pregnant; I have a baby.

SENATOR HORGAN: The miracle of birth, I guess.

ALICE MAY: It appears...it appears as if she's given birth to a baby and it's hers.

SENATOR HORGAN: And...so...okay.

SENATOR WESELY: Senator Vrtiska.

SENATOR VRTISKA: How much...just out of curiosity, how much training in a non-certified midwife is necessary, or do you...is there any...is there any amount? Or, does it depend on the individual?

ALICE MAY: It depends on states. Many states have state certification of midwives. State organizations have their own certification process in many states. There is a...the International Confederation of Midwives and the American College of Nurse Midwives and MANA in this joint statement that is the last page of my testimony, has come out with a registry exam that direct entry midwives can take, to be...to be certified. It depends on the state.

SENATOR VRTISKA: Do you have any idea how many states are...are use...have laws that allow midwifery and...and home births?

ALICE MAY: It's in your book.

SENATOR VRTISKA: Okay. I'll read the book. Thank you.

ALICE MAY: It is constantly changing. There are several.

SENATOR VRTISKA: Thank you.

SENATOR WESELY: Any other questions? May what Senator Vrtiska was asking for, if somebody in Nebraska that is now a midwife, is there anything that requires any training? Any standards?

ALICE MAY: There is no formal legislation. There is no...no, that is available, however, if they choose to take the MANA registry exam or any other.

SENATOR WESELY: Okay. Any other questions? Thank you very much. Thanks for coming down.

ALICE MAY: Thank you.

SENATOR WESELY: Uh-huh. Next in opposition?

MARK KELLOUGH: Good afternoon, Senators. My name is Mark Kellough. I'm a practicing chiropractor here in Lincoln, and I speak in opposition to the amendment of LB 837 and, but also, as a...a proponent to choice in health care. Okay? So, I just have a few points that I wanted to make and then I need to go. But, generally, people who have experienced or chose home birth are well-educated, very well-informed consumers of the public. They're people sometimes who are afraid of the risks that you might find in a medical or hospital setting. Allowing this amendment to pass will assure that all medical professions and hospitals will see all pregnancies and eliminate the choice of the well informed public to choose the way they like to have their child born. Contrary to how...and I'm not here to lambaste medicine or anything like that; we need that. We need it when those...in those special cases where there's high risk and so forth. But, contrary to how medicine looks at it and how the general public perceives child bearing and pregnancy, child bearing and pregnancy is not a disease. Okay? It's...it's not an illness. It seldom needs help. As Lincoln's midwife was talking...the certified nurse midwife, 99 percent of home...or, excuse me, 99 percent of births are risk-free and normal and so forth. And, so we're talking about a very small percentage. And, these people out here behind me, they want choice in health care. They want some options. They don't want people to step in and say,

particularly when they're well informed, of how they should have their child. Although I'm opposed to the amendment of LB 837, I agree with Dave Montgomery and Dr. Horton and the Board of...excuse me, the Department of Health's position that perhaps, instead of making the beautiful experience of safe home birth illegal, even if it's temporary, we should consider identifying the applicant group, which I don't think that will be any problem, and running it through the credential and review process. You know why LB 407 was enacted, and it was because there's a need for more thorough evaluation of complex materials and issues. And, this is certainly...meets that criteria. But, I am opposed to the Department of Health's position that this will be a short term solution to this problem. I recommend, or I suggest and ask that you drop the amendment until we go through the 407 process, and take a much closer, more exposing look at it, through the public forum and the public hearing, before we do anything else on that. You have many women out here who are planning home births. They're in the process of having it taking place, and to pass this amendment would stop that and make that procedure illegal. So, I ask for your consideration on this matter, and I thank you very much.

SENATOR WESELY: Thank you, Mr. Kellough. Are there questions? I have a few. Under what authority do you practice as a chiropractor?

MARK KELLOUGH: I am licensed by the State of Nebraska.

SENATOR WESELY: And, licensed, you are authorized to practice under a certain scope in statute.

MARK KELLOUGH: Yes, I am.

SENATOR WESELY: And, under what authority do we now allow for nurse midwives? What scope of practice do they practice under? Under what authority in the statutes are they allow to practice?

MARK KELLOUGH The certified nurse midwives?

SENATOR WESELY: Nurse...lay nurse midwives.

MARK KELLOUGH: To my knowledge, they don't have a law that spells that out.

SENATOR WESELY: Does everybody, essentially, that has a practice have some sort of licensure process, scope of

practice they...they provide care under?

MARK KELLOUGH: Most health professions do.

SENATOR WESELY: Yes. So, I don't understand...you talked about the well-educated, well-informed individuals, and I think that's correct from what I understand, but was there no indication of any question about author...authority to provide for lay nurse...nurse midwives or lay midwives or entry midwives? Has anybody been informed about that as part of the process? Are you aware of any question about this?

MARK KELLOUGH: I don't understand that. Would you restate that? Tell me that again.

SENATOR WESELY: Well, as part of the education process, there's no authority for a midwife in the statutes. The practice of medicine, as you know, unless a chiropractor is authorized to do something, they cannot practice medicine under the statutes.

MARK KELLOUGH: That's correct.

SENATOR WESELY: So, how is it that people assumed, and you seemed to assume because you indicate that this will make something illegal when, in fact, there's nothing that I'm aware of that makes it legal?

MARK KELLOUGH: Okay. Well, maybe illegal is a bad term, maybe make it...I guess it would make it inappropriate or, you know, unavailable, I think is the word. And, what I'm talking about, Senator Wesely, is the right to choose the type of birth you want for your child.

SENATOR WESELY: I understand that, but I'm...I'm looking at the legal implications of what is possible now, what has been possible, and what should be possible. And, I agree that 407 will look at the what should be possible, but I question what people seem to be interpreting as the current status of things. Any other questions? Thank you. Appreciate you joining us. Anybody else in opposition? Another 15 minutes or so.

GAIL JOHNSON: Hello. I'm finally here, huh? I didn't mean to jump the gun, but it was a long 8-hour ride back from Missouri. Senators, I'm...I'm an Omaha citizen. I'm a former teacher for the Millard Public School system, and I had my little speech (Exhibit 6) and I'll try and make it

brief. George Washington, Abraham Lincoln, Albert Einstein, both of my parents, all of my grandparents and my four-year-old son, Luke Johnson, all have one thing in common. They were all born at home. All of us, everyone here, is the result of natural birth, and specifically home birth, either directly or indirectly because, although you may not have been born at home, chances are your parents were and almost certainly your grandparents were. Nature depended on the survival of our species through the process of birth. It did not have to care about the individual mother or the individual baby, but it was designed to ensure that the vast majority of births would produce a healthy, normal outcome for both mother and baby. Now, I know we've heard this before but, to quote Joanne Bronson, the certified nurse midwife in Lincoln, 90-95 percent of the time, there are no complications. Let me rephrase that; 90-95 percent of the time, birth is not a medical event. It's simply a normal physiologic process. Throughout history, home birth and midwifery have been the cornerstone of the birthing process. Midwives have been here and they've been catching babies in the State of Nebraska since before Nebraska was a state. If any of your family was in Otoe County, Nebraska, in the early 1900s, their births were probably touched by the loving hands of a midwife by the name of Bertha Mae McDaniel. She caught all the babies in Otoe County. This woman was my great-grandmother. I don't know how we can define or make something illegal, something that's as old as dirt. I mean...the women of that generation didn't have a choice. All births, for better or worse, were at home. Today, highly trained physicians and equipped hospitals have added another option and an element of safety especially for abnormal birthing scenarios. Personally, I have the greatest respect and admiration for the work of these caring professionals. No one is denying that there will always be a small percentage of births that need the guidance and help of these really highly-trained specialists. I would be in the first of the line pursuing their knowledge, talents, and skills if my birth warranted that type of medical intervention. But, my births were normal, uncomplicated deliveries of healthy babies. And, to insist that I needed this type of specialized care and to treat it as though it were a medical event, is unwarranted. To me, it was unnecessary to hire and pay for an over-qualified professional for my birth. Instead, I believe that I chose a person whose skills and talents best fit my philosophy, my needs, and my babies' needs. Direct entry midwives have been the specialists in the process of normal, uncomplicated routine birth for as long as anyone can remember. As you will hear in later discussions, our

physicians are trained, and gratefully so, in complications in abnormal pregnancy, labor and birth. My births didn't require those specialized skills. Whether or not you personally believe in the option of home birth attended by a direct entry midwife, is not the issue. Hopefully, the number of phone calls, the number of letters, received by our Senators in the state regarding this issue, and all the people that you see here on Wednesday, a work day, at noon, will please show you, the Senators in our state, that the people of Nebraska do believe in this as a reasonable, responsible option. We're just asking for the carefully-made plans of educated citizens and loving parents to be respected. That's all. Senator Wesely's amendment, as we heard it, Senator Wesely, and maybe there's been some...some changes there, but I'll follow through with what I was intending to say. Senator Wesely's amendment will not prevent women from choosing the option of home birth. Whether you know about it or not, they've always done it, and they always will do it if that's what they want. Home birth should not, and is not, illegal in any state in our country. What this amendment will do, however....however well-intentioned it is, and I know it's well-intentioned, but it will prevent parents like myself and my husband, and many of the people you see in this room; it will prevent us from legally retaining the services of a loving, well-trained, experienced midwife for their home births; thus, making home birth less safe. As it is well-documented and you will find it in the booklets we gave to you yesterday, that home births are statistically safer in the presence of a midwife than they are when they are unplanned and unattended. Senators, options should not frighten us. The lack of options should. Please take the time to educate yourself on the hard facts and statistics associated with home birth and direct entry midwives. You may find that your study brings you to the logical conclusion that home birth and direct entry midwives are a safe and a reasonable option in the presence of a normal pregnancy, labor and birth. In addition, the carefully-made plans of parents deserve to be respected. And, however unintentional this was, Senator Wesely, I'd like to personally thank you for calling this meeting on May 5. Today is International Midwifery Day. Thank you. I'm a friend of Mary Jane Kallsky (phonetic) and I know her kids...your kids go to school with her kids.

SENATOR WESELY: Why don't...why don't you state your name for the record, since you didn't do that to begin with.

GAIL JOHNSON: I'm sorry. Oh, my name is Gail Johnson.

SENATOR HORGAN: Okay. Gail, you had...you had children at home with a direct entry midwife in Nebraska?

GAIL JOHNSON: Yes.

SENATOR HORGAN: Let me kind of pursue the same questions I was before.

GAIL JOHNSON: Go right ahead.

SENATOR HORGAN: Did you have prenatal care with a physician?

GAIL JOHNSON: Yes, I went to an obstetrician. I...I had a really great family practice doctor that I used for my two...first two babies. They were absolutely wonderful births. I spent a total...went in at 10:30, had her at 2:30, was home by 8:00. Went in at 9...8:00, had him at 9:00, my husband caught the baby, and we were home at 3:00 that afternoon. I've spent a total of 16 hours in...for two births in a hospital. The option of home birth seemed like a very realistic, responsible thing for us to do. So...

SENATOR HORGAN: Did...I mean...time...time is short and other people want to testify but...

GAIL JOHNSON: All right. Okay. So...

SENATOR HORGAN: The...the other question I have is about insurance. Do...did...did the mid...mid...

GAIL JOHNSON: We...we submitted an insurance claim.

SENATOR HORGAN: For the midwife?

GAIL JOHNSON: For the direct entry midwife.

SENATOR HORGAN: Was it paid?

GAIL JOHNSON: Yes. Our insurance company was not in the State of Nebraska, and we were ready to do battle.

SENATOR HORGAN: Okay. Let me...I mean, time is short.

GAIL JOHNSON: Okay.

SENATOR HORGAN: The question of birth certificate. Did you have trouble getting a birth certificate?

GAIL JOHNSON: My husband went down. He filed. They kind of raised their eyebrow at him. They sent up a nurse to...from the Department of Health to come out to the house, to see that we had a baby. That was fine with me. She had questions, and you could tell she was just interested, why did this school teacher choose for the option of home birth? So, yes, we do have the birth certificate. And, yes, I did have an obstetrician that I saw.

SENATOR HORGAN: Okay. Okay. Well, it just...I mean, the testimony that I'm hearing, whether or not this is good or bad, I mean, I think...I don't...I don't really know, but, I mean, it's evident to me that the State of Nebraska...somebody at the State of Nebraska has known this has been going on. It is...it is...you know...

GAIL JOHNSON: But you see... I don't...I think the rule here is don't fix something that's not broken. And, now, maybe the...maybe the state feels that this system is broken.

SENATOR HORGAN: And, in...and since...and physicians know that this is going on, and some insurance companies know that this is going on.

GAIL JOHNSON: Right. Right.

SENATOR HORGAN: So...I...I guess I'm just amazed, is the overall conclusion that I make. But...

GAIL JOHNSON: It's been going on since the beginning of time.

SENATOR HORGAN: Okay. I appreciate your testimony. Thanks.

SENATOR WESELY: Other questions? Thank you. Appreciate your testimony. Next.

GAIL JOHNSON: Thanks. Oh, I also have the written transcripts I'd like to give out.

LISA BRADLEY: Senator Wesely and members of the committee, thank you for the opportunity to speak before you today. I am Lisa Bradley from Columbus. I hold a Bachelors from the University of Nebraska-Lincoln. I'm a childbirth educator, and I'm the chair of Birth Awareness Group, or BAG, which is a statewide consumer group that supports safe birth options.

I am here today to urge you not to adopt the midwifery amendment to LB 837 before the 407 review process. I also request that that body duly consider all testimony presented here today, and be fairly composed of people knowledgeable on this issue. I offer myself as one of those people. I have no position on LB 837 itself, but I believe it would be a serious mistake to approve the proposed amendment. And, I know that the introducers of this bill were very well-intentioned, and believed they were protecting the public from a danger. I know they believe that lay midwifery and home birth are unsafe and that doctors and hospitals are the proper place for women to give birth, as well as other certified health care professionals such as CNMs. And, doctors and hospitals are the best for women with some types of complications and those who prefer them. But, the facts are clear, that planned home birth, with trained lay midwives, is not unsafe for low-risk women. I refer to the Birth Awareness Group booklet that was given to you yesterday, which is divided into sections by blue dividing paper. If you will turn to the goldenrod-colored paper in here, pages 10 and 11, you will see an annotated bibliography of some of the studies done on this issue. There are many more. They show that home birth and lay midwifery are as safe as other birth locations and practitioners or that they are safer. And, then if you are not familiar with the Parade Magazine that came out February 7 of this year, it is duplicated here, the first page of the last section, for your information. It describes a ten-year-long study that three researchers took, of pregnancy and birth practices. They consulted over 60 key professional journals, and 40,000 obstetricians and pediatricians in 18 countries. Chapter 3 of the consolidated version of that study recommends, among other things, that women should not be routinely confined in institutions to give birth, that midwives often give more appropriate care than obstetric specialists, and that obstetricians and doctors should not be involved with every pregnancy. I recommend also to you the gray booklet which has already been referred to. Pages 114 through 128 list and explain additional studies on this issue. You may have heard that studies show that home birth is two to five times more dangerous than hospital births. Frequently, such reports come from not separating planned from unplanned home births. Unplanned home birth, as we heard earlier today, can include women who didn't make it to the hospital in time, and also can include such things as miscarriage, women who kill their babies at birth, or abandon them to die, and those who are turned away from hospitals for lack of money. Obviously, this is not an accurate study of the safety of

lay midwifery and planned home birth. Nebraska statistics, as we heard, have the same problem. Our Vital Statistics Department has no mechanism for identifying and separating out planned home birth attended by women claiming to be midwives...non-nurse midwives. The only reliable data that we do have is two court cases; one this year involving Karen Gourley and a 1977 involving a lay midwife named Patty Turkell. This seems to me to indicate a known midwife-associated infant mortality rate that is very low. Although, until the laws would be changed and home birth and lay midwifery would have protected legal status, there is no way to gather accurate facts on...on this issue. Modern medicine has vigorously promoted, and obviously has an economic interest in promoting, the idea that technology and highly-trained specialists are always good and necessary for a safe birth. But, the facts show that much of modern birth technology can interrupt birth, and many times can make it go wrong. In the most thorough analysis ever done on the issue of safety, British statistician Marjorie Tew concluded results show that optimal conditions are most nearly achieved by midwifery practiced in an environment protected from the menace of high technology. Mrs. Tew shows us that although our infant mortality rate has dropped over the years, it would have dropped faster if more births took place at home. The U.S. infant mortality rate currently, or as of the last that figures were available which is 1991, we stood 21st in the world, with 95 percent of births taking place in the hospital with obstetricians. This pink booklet (Exhibit 8) which I have available for you, with a copy of my testimony (Exhibit 7) summarizes the research in the two key chapters of her book on infant mortality and maternal mortality. Most of the countries with the lowest infant mortality rates used excellent prenatal counseling, technology when needed, and midwives. On page 4 of the birth awareness book...Birth Awareness Group booklet, we have included also a 1992 study, which is one of the most recent, that concludes, in part, that home birth with trained lay midwives is not any less safe than conventional delivery. These and other facts must be examined by a balanced review process before enacting any legislation. The facts clearly demonstrate that there is no medical reason for most or all women to be in the hospital, nor to see and be under the care of a medically-certified care provider for pregnancy. I welcome your questions.

SENATOR WESELY: Thank you, Lisa. Are there...are there questions? Senator Day.

SENATOR DAY: I agree with Senator Wesely. I think we're

dealing with whether it's legal or illegal now. But, let's say that it comes and what's happening is illegal now. You've shown us that there's a definite need for this, and that we want to do this. Are there people in the state that really want to do it? Do you have any problem with the fact that we certify them, or that they are licensed by the state, the lay midwives?

LISA BRADLEY: I appreciate your question Senator Day. I really do. And, I am chair of a consumer group. I do not represent the midwives. I think the midwives themselves would need to say whether they had a problem with that. I...I think that would be the appropriate answer.

SENATOR DAY: As a consumer, would you be...and I take it you a consumer of mid...with the midwifery, would you be more comfortable with them being certified by the state?

LISA BRADLEY: As my own personal problem with that is that, in many of the states where legislation has been enacted, it has been co-opted by people with vested economic interests against them. And, very frequently it results in unsatisfactory legislation where the midwives cannot practice to the full scope of their training, their ability and their demand.

SENATOR DAY: As I read through your book, that was one of the things, though, I noticed. In most of the articles in that, it was licensed midwives, as they discussed them.

LISA BRADLEY: Yes. Uh-huh. Yes, and that is, they are non-nurse midwives who do have formal recognition from the state. At this point, in this state, there is nothing prohibiting the practice of a non-nurse midwife, although Senator Wesely is saying that it's assumed that they had been illegal. In fact, that is why the judge did not admit that case, is because there is nothing on the books prohibiting her or cl...or saying that she should not...a non-nurse midwife should not practice, nor should there be.

SENATOR DAY: Okay. Thank you.

SENATOR WESELY: Other questions? Of course, I disagree with your last assessment. But, the Seattle School of Midwifery, are they some entity that you recognize as sound?

LISA BRADLEY: I'm some familiar with it, yes. I see you are consulting your booklet.

SENATOR WESELY: Well, according to them, and then this article in the Wall Street Journal Nebraska's among the states that does not provide for legal non-nurse midwifery. You have another chart here, and I don't know where this is from, that seems to indicate that...that it is. Where...where did this come from? What's the stat...who...who could...

LISA BRADLEY: The source of that is a booklet called Midwifery and the Law put out by New...or a publication in New Mexico. I'd be happy to get you the whole...if you want.

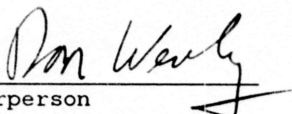
SENATOR WESELY: But...but is it...by what grounds is it? Is it an independent, or it is a midwifery association?

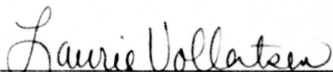
LISA BRADLEY: It's independent. It's...it's called Mothering Magazine. They publish articles on a wide variety of...of midwifery, parenting issues.

SENATOR WESELY: Okay. Well, I appreciate your information. Thank you very much. Thank you all for your attendance today. Unfortunately, we have to go up to the floor. And, if you had a chance to sign in, your...your position on the bill will be recognized as part of the hearing transcript. Thank you for your cooperation. That'll end the hearing today. (Exhibit 9 also included as part of the hearing.)

Disposition of Bills:

LB 837 - Advanced to General File, as amended.


Chairperson


Committee Clerk