

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 11-0109.01 Duane Gall

SENATE BILL 11-088

SENATE SPONSORSHIP

Carroll and Lundberg, Boyd, Mitchell

HOUSE SPONSORSHIP

Acree,

Senate Committees

Health and Human Services
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF DIRECT-ENTRY MIDWIVES, AND, IN**
102 **CONNECTION THEREWITH, IMPLEMENTING THE SUNSET REVIEW**
103 **RECOMMENDATIONS OF THE DEPARTMENT OF REGULATORY**
104 **AGENCIES, AND MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Sunset Process - Senate Health and Human Services Committee. The bill implements the recommendations set forth by the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
March 11, 2011

department of regulatory agencies in its 2010 sunset review of the regulation program for direct-entry midwives (program).

Sections 1, 2, and 3 of the bill continue the program for 5 years, until September 1, 2016. **Section 4** prohibits a certified nurse-midwife from being simultaneously licensed as a nurse and registered as a direct-entry midwife. **Section 5** clarifies applicable definitions. **Sections 6, 7, 8, 10, 12, and 13** make technical changes and corrections to existing language.

Section 9 gives direct-entry midwives limited prescriptive authority to obtain and administer vitamin K, Rho(D) immune globulin, and antihemorrhagic drugs, subject to stated limitations and rules of the director of the division of registrations (director), beginning March 31, 2012. Section 9 also gives direct-entry midwives the authority to obtain eye prophylaxis, which they are already authorized and directed to administer to newborns, and to perform suturing and administration of intravenous fluids in accordance with rules of the director.

Section 11 clarifies the distinction, for disciplinary penalty purposes, between serious violations of the standards of practice and less serious violations of applicable statutes and rules. Section 11 also:

- ! Requires the director to adopt rules establishing a fine structure and the circumstances under which fines may be imposed;
- ! Adds to the list of violations for which suspension or revocation is authorized a failure to respond in a full and timely manner to a complaint and a failure to comply with an order of the director;
- ! Amends language referring to "habitual intemperance" with regard to drugs or alcohol; and
- ! Makes technical amendments and corrections to existing statutory language.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Repeal.** 24-34-104 (42) (d), Colorado Revised
3 Statutes, is repealed as follows:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for termination, continuation, or reestablishment.**

6 (42) The following agencies, functions, or both, shall terminate on July
7 1, 2011:

8 (d) ~~The registration of direct-entry midwives by the division of~~

1 ~~registrations in accordance with article 37 of title 12, C.R.S.;~~

2 **SECTION 2.** 24-34-104 (47.5), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for termination, continuation, or reestablishment.**

6 (47.5) The following agencies, functions, or both, shall terminate on
7 September 1, 2016:

8 (c) THE REGISTRATION OF DIRECT-ENTRY MIDWIVES BY THE
9 DIVISION OF REGISTRATIONS IN ACCORDANCE WITH ARTICLE 37 OF TITLE
10 12, C.R.S.;

11 **SECTION 3.** 12-37-110 (1), Colorado Revised Statutes, is
12 amended to read:

13 **12-37-110. Repeal of article.** (1) This article is repealed,
14 effective ~~July 1, 2011~~ SEPTEMBER 1, 2016.

15 **SECTION 4.** 12-37-101 (1), Colorado Revised Statutes, is
16 amended to read:

17 **12-37-101. Scope of article - exemptions - legislative**
18 **declaration.** (1) (a) ~~The provisions of This article shall apply~~ APPLIES
19 only to direct-entry midwives ~~also known as "lay" midwives, and shall~~
20 DOES not apply to those persons who are otherwise licensed by the state
21 of Colorado under this title if the practice of midwifery is within the
22 scope of such licensure.

23 (b) (I) ~~No~~ A person who is a ~~licensed professional or practical~~
24 ~~nurse as provided in article 38 of this title~~ CERTIFIED NURSE-MIDWIFE
25 AUTHORIZED PURSUANT TO SECTION 12-38-111.5 or a physician as
26 provided in article 36 of this title shall NOT simultaneously be so licensed
27 and also be registered under this article. A ~~licensed professional or~~

1 ~~practical nurse as provided in article 38 of this title or physician as~~
2 ~~provided in article 36 of this title~~ OR CERTIFIED NURSE-MIDWIFE who
3 holds a license in good standing may relinquish ~~said~~ THE license and
4 subsequently be registered under this article.

5 (II) A DIRECT-ENTRY MIDWIFE SHALL NOT REPRESENT HIMSELF OR
6 HERSELF AS A NURSE-MIDWIFE OR CERTIFIED NURSE-MIDWIFE.

7 (III) THE FACT THAT A DIRECT-ENTRY MIDWIFE MAY HOLD A
8 PRACTICAL OR PROFESSIONAL NURSING LICENSE DOES NOT EXPAND THE
9 SCOPE OF PRACTICE OF THE DIRECT-ENTRY MIDWIFE.

10 (IV) THE FACT THAT A PRACTICAL OR PROFESSIONAL NURSE MAY
11 BE REGISTERED AS A DIRECT-ENTRY MIDWIFE DOES NOT EXPAND THE
12 SCOPE OF PRACTICE OF THE NURSE.

13 (c) It is the intent of the general assembly that health care be
14 provided pursuant to this article as an alternative to traditional licensed
15 health care and not for the purpose of enabling providers of traditional
16 licensed health care to circumvent the regulatory oversight to which they
17 are otherwise subject under any other article of this title.

18 **SECTION 5.** 12-37-102, Colorado Revised Statutes, is amended
19 to read:

20 **12-37-102. Definitions.** As used in this article, unless the context
21 otherwise requires:

22 (1) "CLIENT" MEANS A PREGNANT WOMAN FOR WHOM A
23 DIRECT-ENTRY MIDWIFE PERFORMS SERVICES. FOR PURPOSES OF
24 PERINATAL OR POSTPARTUM CARE, "CLIENT" INCLUDES THE WOMAN'S
25 NEWBORN.

26 ~~(1)~~ (2) "Direct-entry midwife" means a person who practices
27 ~~traditional~~, direct-entry midwifery. ~~as defined in subsection (2) of this~~

1 section:

2 (2) (3) "Direct-entry midwifery" or "practice of direct-entry
3 midwifery" means the advising, attending, or assisting of a woman during
4 pregnancy, labor and natural childbirth at home, and during the
5 postpartum period in accordance with this article.

6 (3) (4) "Director" means the director of the division. ~~of~~
7 ~~registrations in the department of regulatory agencies.~~

8 (5) "DIVISION" MEANS THE DIVISION OF REGISTRATIONS IN THE
9 DEPARTMENT OF REGULATORY AGENCIES.

10 (4) (6) "Natural childbirth" means the birth of a child without the
11 use of ~~prescription drugs~~, instruments, ~~or~~ surgical procedures, OR
12 PRESCRIPTION DRUGS OTHER THAN THOSE FOR WHICH THE DIRECT-ENTRY
13 MIDWIFE HAS SPECIFIC AUTHORITY UNDER THIS ARTICLE TO OBTAIN AND
14 ADMINISTER.

15 (5) (7) "Postpartum period" means the period of six weeks after
16 birth.

17 (6) (8) "Registrant" means a direct-entry midwife registered
18 pursuant to section 12-37-103.

19 **SECTION 6.** 12-37-103 (1), (2), (3), and (4.5), the introductory
20 portion to 12-37-103 (5), and 12-37-103 (5) (d), (5) (e), and (6), Colorado
21 Revised Statutes, are amended, and the said 12-37-103 is further amended
22 BY THE ADDITION OF A NEW SUBSECTION, to read:

23 **12-37-103. Requirement for registration with the division of**
24 **registrations - annual fee - grounds for revocation.** (1) Every
25 direct-entry midwife shall register with the division of registrations by
26 ~~providing an application~~ APPLYING to the director in the form AND
27 MANNER the director ~~shall require~~ REQUIRES. Said application shall

1 include the information specified in section 12-37-104.

2 (2) Any changes in the information required by subsection (1) of
3 this section shall be reported within thirty days ~~of said~~ AFTER THE change
4 to the division ~~of registrations~~ in the FORM AND manner ~~prescribed~~
5 REQUIRED by the director.

6 (3) Every applicant for registration shall pay a registration fee to
7 be established by the director in the manner authorized by section
8 24-34-105, C.R.S. Registrations shall be renewed or reinstated pursuant
9 to a schedule established by the director and shall be renewed or
10 reinstated pursuant to section 24-34-102 (8), C.R.S. The director may
11 establish renewal fees and delinquency fees for reinstatement pursuant to
12 section 24-34-105, C.R.S. If a person fails to renew his or her registration
13 pursuant to the schedule established by the director, ~~of the division of~~
14 ~~registrations~~, such registration shall expire. Any person whose
15 registration has expired shall be subject to the penalties provided in this
16 article or section 24-34-102 (8), C.R.S.

17 (4.5) A person who has had his or her registration revoked shall
18 not apply for ~~reregistration~~ A NEW REGISTRATION until at least two years
19 have elapsed since the date of the revocation.

20 (5) To qualify to register, a direct-entry midwife ~~shall~~ MUST have
21 successfully completed an examination evaluated and approved by the
22 director as an appropriate test to measure competency in the practice of
23 direct-entry midwifery, which examination ~~shall~~ MUST have been
24 developed by a person or entity other than the director or the division and
25 the acquisition of which shall require no expenditure of state funds. The
26 national registry examination administered by the midwives' alliance of
27 North America, incorporated, ~~shall~~ OR ITS SUCCESSOR, MUST be among

1 those evaluated by the director. The director is authorized to approve any
2 existing test meeting all the criteria set forth in this subsection (5). In
3 addition to successfully completing such examination, a direct-entry
4 midwife ~~shall be deemed~~ IS qualified to register if such person has:

5 (d) Acquired practical experience including, at a minimum,
6 experience with the conduct of AT LEAST one hundred prenatal
7 examinations on no fewer than thirty different women and observation of
8 AT LEAST thirty births;

9 (e) Participated as a birth attendant, including rendering care from
10 the prenatal period through the postpartum period, in connection with ~~no~~
11 ~~less than~~ AT LEAST thirty births; and

12 (6) Effective July 1, 2003, in order to be deemed qualified to
13 register, a direct-entry midwife ~~shall~~ MUST have graduated from an
14 accredited midwifery educational program or obtained a substantially
15 equivalent education approved by the director. Such educational
16 requirement ~~shall~~ DOES not apply to direct-entry midwives who have
17 registered with the division of registrations before July 1, 2003.

18 (7) FOR PURPOSES OF REGISTRATION UNDER THIS ARTICLE, NO
19 CREDENTIAL, LICENSURE, OR CERTIFICATION ISSUED BY ANY OTHER STATE
20 MEETS THE REQUIREMENTS OF THIS ARTICLE, AND THEREFORE THERE IS NO
21 RECIPROCITY WITH OTHER STATES.

22 **SECTION 7.** The introductory portion to 12-37-104 (1) and
23 12-37-104 (1) (d), (1) (e), and (3), Colorado Revised Statutes, are
24 amended, and the said 12-37-104 (1) is further amended BY THE
25 ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

26 **12-37-104. Mandatory disclosure of information to clients.**
27 (1) Every direct-entry midwife shall provide the following information

1 in writing to each ~~patient~~ CLIENT during the initial ~~patient~~ CLIENT contact:

2 (d) A listing of any license, certificate, or registration in the health
3 care field previously OR CURRENTLY held by the direct-entry midwife and
4 SUSPENDED OR revoked by any local, state, or national health care agency;

5 (e) A statement that the practice of direct-entry midwifery is
6 regulated by the department of regulatory agencies. The statement ~~shall~~
7 MUST provide the address and telephone number of the ~~complaints and~~
8 ~~investigations section of~~ OFFICE OF MIDWIFERY REGISTRATION IN the
9 division of ~~registrations in the department of regulatory agencies~~ and shall
10 state that violation of ~~the provisions of~~ this article may result in
11 revocation of registration and of the authority to practice direct-entry
12 midwifery in ~~the state of~~ Colorado.

13 (g) A STATEMENT INDICATING WHETHER OR NOT THE
14 DIRECT-ENTRY MIDWIFE WILL ADMINISTER VITAMIN K TO THE CLIENT'S
15 NEWBORN INFANT AND, IF NOT, A LIST OF QUALIFIED HEALTH CARE
16 PRACTITIONERS WHO CAN PROVIDE THAT SERVICE;

17 (h) A STATEMENT INDICATING WHETHER OR NOT THE
18 DIRECT-ENTRY MIDWIFE WILL ADMINISTER RHO(D) IMMUNE GLOBULIN TO
19 THE CLIENT IF SHE IS DETERMINED TO BE RH-NEGATIVE AND, IF NOT, A LIST
20 OF QUALIFIED HEALTH CARE PRACTITIONERS WHO CAN PROVIDE THAT
21 SERVICE; AND

22 (i) A STATEMENT INDICATING WHETHER OR NOT THE
23 DIRECT-ENTRY MIDWIFE WILL PERFORM SUTURING OF PERINEAL TEARS
24 AND, IF SO, WHAT TRAINING THE DIRECT-ENTRY MIDWIFE HAS HAD IN
25 PERFORMING THE SERVICE, THE NUMBER OF CLIENTS FOR WHOM HE OR SHE
26 HAS DONE SO, AND THE RISKS OF HAVING PERINEAL TEARS SUTURED
27 OUTSIDE OF A HOSPITAL OR OTHER MEDICAL FACILITY.

1 (3) For purposes of registration under this article, no credentials,
2 licensure, or certification issued by any other state shall constitute or be
3 deemed to meet the requirements of this article, and to that extent there
4 shall be no reciprocity with other states.

5 **SECTION 8.** 12-37-105 (1), the introductory portion to
6 12-37-105 (5) (a) (III), 12-37-105 (5) (a) (III) (C), (5) (a) (III) (D), (5) (a)
7 (III) (F), (5) (a) (IV), (6), (7), and (8), the introductory portion to
8 12-37-105 (12), and 12-37-105 (13) and (14), Colorado Revised Statutes,
9 are amended to read:

10 **12-37-105. Prohibited acts - practice standards - informed**
11 **consent - emergency plan - risk assessment - referral - rules.** (1) A
12 direct-entry midwife shall not dispense or administer any medication or
13 drugs except for required eye prophylactic therapy IN ACCORDANCE WITH
14 SECTION 12-37-105.5.

15 (5) (a) A direct-entry midwife shall keep appropriate records of
16 midwifery-related activity, including but not limited to the following:

17 (III) ~~Prior to~~ BEFORE accepting a client for care, the direct-entry
18 midwife shall obtain the client's informed consent, which shall be
19 evidenced by a written statement in a form prescribed by the director and
20 signed by both the direct-entry midwife and the client. The form shall
21 certify that full disclosure has been made and acknowledged by the client
22 as to each of the following items, with the client's acknowledgment
23 evidenced by a separate signature or initials adjacent to each item in
24 addition to the client's signature at the end of the form:

25 (C) A DESCRIPTION OF the available alternatives to direct-entry
26 midwifery care, INCLUDING A STATEMENT THAT THE CLIENT
27 UNDERSTANDS SHE IS NOT RETAINING A CERTIFIED NURSE MIDWIFE OR A

1 NURSE MIDWIFE:

2 (D) A description of the risks of birth, including ~~but not limited~~
3 ~~to~~ those that are different from those of hospital birth and ~~including but~~
4 ~~not limited to~~ those conditions that may arise during delivery;

5 (F) A statement informing the client that, ~~in the event~~ IF
6 subsequent care is required resulting from the acts or omissions of the
7 direct-entry midwife, any physician, nurse, prehospital emergency
8 personnel, and health care institution rendering such care shall be held
9 only to a standard of gross negligence or willful and wanton conduct.

10 (IV) Until ~~such time as~~ the liability insurance required pursuant
11 to section 12-37-109 (3) is available, each direct-entry midwife shall,
12 ~~prior to~~ BEFORE accepting a client for care, provide such client with a
13 disclosure statement indicating that the midwife does not have liability
14 insurance. Such statement, ~~shall~~ TO COMPLY WITH THIS SECTION, MUST be
15 printed in at least twelve-point bold-faced type and shall be read to the
16 client in a language she understands. Each client shall sign the disclosure
17 statement acknowledging that she understands the effect of its provisions.
18 A copy of the signed disclosure statement shall be given to the client.

19 (6) A direct-entry midwife shall prepare a plan, ~~and procedure,~~ in
20 a THE form ~~prescribed~~ AND MANNER REQUIRED by the director, for
21 emergency situations. ~~which shall~~ THE PLAN MUST include ~~but not be~~
22 ~~limited to,~~ PROCEDURES TO BE FOLLOWED IN situations in which the time
23 required for transportation to the nearest facility capable of providing
24 appropriate treatment exceeds limits established by the director by rule.
25 A copy of such plan shall be given to each client as part of the informed
26 consent required by subsection (5) of this section.

27 (7) A direct-entry midwife shall prepare and transmit appropriate

1 specimens for newborn screening in accordance with section 25-4-1004,
2 C.R.S., AND SHALL REFER EVERY NEWBORN CHILD FOR EVALUATION,
3 WITHIN SEVEN DAYS AFTER BIRTH, TO A LICENSED HEALTH CARE PROVIDER
4 WITH EXPERTISE IN PEDIATRIC CARE.

5 (8) A direct-entry midwife shall ensure that appropriate laboratory
6 testing, as determined by the director, is completed for each ~~pregnant~~
7 ~~woman in such direct-entry midwife's care~~ CLIENT.

8 (12) At the time of ~~re-registration~~ RENEWAL OF A REGISTRATION,
9 each registrant shall submit the following data ~~on a~~ IN THE form
10 ~~prescribed~~ AND MANNER REQUIRED by the director:

11 (13) ~~It shall be lawful for~~ A registered direct-entry midwife ~~to~~
12 MAY purchase, possess, carry, and administer oxygen. The department of
13 regulatory agencies shall promulgate rules concerning minimum training
14 requirements for direct-entry midwives with respect to the safe
15 administration of oxygen. ~~to patients.~~ Each ~~direct-entry midwife~~
16 ~~registered pursuant to this article~~ REGISTRANT shall complete the
17 minimum training requirements and submit proof of having completed
18 such requirements to the director before administering oxygen to any
19 ~~patient~~ CLIENT.

20 (14) A ~~direct-entry midwife is prohibited from practicing~~
21 REGISTRANT SHALL NOT PRACTICE beyond the scope of HIS OR HER
22 education and training or ~~from practicing~~ with a mental or physical
23 impairment sufficient to render the registrant unable to perform
24 midwifery services with reasonable skill and with safety to the ~~patient~~
25 CLIENT.

26 **SECTION 9.** Article 37 of title 12, Colorado Revised Statutes, is
27 amended BY THE ADDITION OF A NEW SECTION to read:

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12-37-105.5. Limited use of certain medications - limited use of sutures - limited administration of intravenous fluids - emergency medical procedures - legislative declaration - rules. (1) A

REGISTRANT MAY OBTAIN PRESCRIPTION MEDICATIONS TO TREAT CONDITIONS SPECIFIED IN THIS SECTION FROM A REGISTERED PRESCRIPTION DRUG OUTLET, REGISTERED MANUFACTURER, OR REGISTERED WHOLESALER. AN ENTITY THAT PROVIDES A PRESCRIPTION MEDICATION TO A REGISTRANT IN ACCORDANCE WITH THIS SECTION, AND WHO RELIES IN GOOD FAITH UPON THE REGISTRATION INFORMATION PROVIDED BY THE REGISTRANT, IS NOT SUBJECT TO LIABILITY FOR PROVIDING THE MEDICATION.

(2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION, A REGISTRANT MAY OBTAIN AND ADMINISTER:

- (a) VITAMIN K TO NEWBORNS BY INTRAMUSCULAR INJECTION;
- (b) RHO(D) IMMUNE GLOBULIN TO RH-NEGATIVE MOTHERS BY INTRAMUSCULAR INJECTION;
- (c) POSTPARTUM ANTIHEMORRHAGIC DRUGS TO MOTHERS;
- (d) EYE PROPHYLAXIS, APPROVED PURSUANT TO SECTION 25-4-303, C.R.S., TO NEWBORNS; AND
- (e) SUTURING MATERIALS AND LOCAL ANESTHETIC FOR MINOR SUTURING IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION.

(3) (a) IF A CLIENT REFUSES A MEDICATION LISTED IN PARAGRAPH (a) OR (b) OF SUBSECTION (2) OF THIS SECTION, THE REGISTRANT SHALL PROVIDE THE CLIENT WITH AN INFORMED CONSENT FORM CONTAINING A DETAILED STATEMENT OF THE BENEFITS OF THE MEDICATION AND THE RISKS OF REFUSAL, AND SHALL RETAIN A COPY OF THE FORM

1 ACKNOWLEDGED AND SIGNED BY THE CLIENT.

2 (b) IF A CLIENT EXPERIENCES UNCONTROLLABLE POSTPARTUM
3 HEMORRHAGE AND REFUSES TREATMENT WITH ANTIHEMORRHAGIC DRUGS,
4 THE REGISTRANT SHALL IMMEDIATELY INITIATE THE TRANSPORTATION OF
5 THE CLIENT IN ACCORDANCE WITH THE EMERGENCY PLAN.

6 (4) A REGISTRANT MAY EMPLOY SUTURES FOR THE LIMITED
7 PURPOSE OF REPAIRING PERINEAL TEARS AND MAY ADMINISTER LOCAL
8 ANESTHETIC IN CONNECTION WITH THE PROCEDURE.

9 (5) A REGISTRANT SHALL, AS PART OF THE EMERGENCY MEDICAL
10 PLAN REQUIRED BY SECTION 12-37-105 (6), INFORM THE CLIENT THAT:

11 (a) IF SHE EXPERIENCES UNCONTROLLABLE POSTPARTUM
12 HEMORRHAGE, THE REGISTRANT IS REQUIRED BY COLORADO LAW TO
13 INITIATE EMERGENCY MEDICAL TREATMENT, WHICH MAY INCLUDE THE
14 ADMINISTRATION OF AN ANTIHEMORRHAGIC DRUG BY THE REGISTRANT TO
15 MITIGATE THE POSTPARTUM HEMORRHAGING WHILE INITIATING THE
16 IMMEDIATE TRANSPORTATION OF THE CLIENT IN ACCORDANCE WITH THE
17 EMERGENCY PLAN.

18 (b) IF SHE EXPERIENCES POSTPARTUM HEMORRHAGE, THE
19 REGISTRANT IS PREPARED AND EQUIPPED TO ADMINISTER INTRAVENOUS
20 FLUIDS TO RESTORE VOLUME LOST DUE TO EXCESSIVE BLEEDING.

21 (c) IF SHE EXPERIENCES PERINEAL TEARING, THE REGISTRANT IS
22 PREPARED AND EQUIPPED TO EMPLOY SUTURES AND ADMINISTER LOCAL
23 ANESTHETIC TO REPAIR THE TEARS OR, UNDER CIRCUMSTANCES TO BE
24 DETERMINED BY THE CLIENT IN ADVANCE, WILL INITIATE THE
25 TRANSPORTATION OF THE CLIENT TO A HOSPITAL OR OTHER MEDICAL
26 FACILITY FOR SUTURING.

27 (6) THE DIRECTOR SHALL PROMULGATE RULES TO IMPLEMENT THIS

1 SECTION. IN PROMULGATING SUCH RULES, THE DIRECTOR SHALL SEEK THE
2 ADVICE OF KNOWLEDGEABLE MEDICAL PROFESSIONALS TO SET STANDARDS
3 FOR EDUCATION, TRAINING, AND ADMINISTRATION THAT REFLECT
4 CURRENT GENERALLY ACCEPTED PROFESSIONAL STANDARDS FOR THE SAFE
5 AND EFFECTIVE USE OF THE MEDICATIONS, METHODS OF ADMINISTRATION,
6 AND PROCEDURES DESCRIBED IN THIS SECTION. THE DIRECTOR SHALL
7 ESTABLISH A PREFERRED DRUG LIST THAT DISPLAYS THE MEDICATIONS
8 THAT A REGISTRANT CAN OBTAIN.

9 **SECTION 10.** 12-37-106 (1) (a), (1) (d), and (1) (e), Colorado
10 Revised Statutes, are amended, and the said 12-37-106 (1) is further
11 amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12 **12-37-106. Director - powers and duties.** (1) In addition to any
13 other powers and duties conferred on the director by law, the director has
14 the following powers and duties:

15 (a) To adopt such rules ~~and regulations~~ as may be necessary to
16 carry out the provisions of this article;

17 (d) To accept applications for registration ~~which~~ THAT meet the
18 requirements set forth in this article, and to collect the annual registration
19 fees authorized by this article;

20 (e) To seek, through the office of the attorney general, an
21 injunction in ~~any~~ A court of competent jurisdiction to enjoin any person
22 from committing ~~any~~ AN act prohibited by this article. When seeking an
23 injunction under this paragraph (e), the director shall not be required to
24 allege or prove the inadequacy of any remedy at law or that substantial or
25 irreparable damage is likely to result from a continued violation of this
26 article.

27 (f) TO SUMMARILY SUSPEND A REGISTRATION UPON THE FAILURE

1 OF THE REGISTRANT TO COMPLY WITH ANY CONDITION OF A STIPULATION
2 OR ORDER IMPOSED BY THE DIRECTOR UNTIL THE REGISTRANT COMPLIES
3 WITH THE CONDITION, UNLESS COMPLIANCE IS BEYOND THE CONTROL OF
4 THE REGISTRANT.

5 **SECTION 11.** 12-37-107 (1), (2), (3), (6), (7), and (13), Colorado
6 Revised Statutes, are amended to read:

7 **12-37-107. Disciplinary action authorized - grounds for**
8 **discipline - injunctions - rules.** (1) If a direct-entry midwife has
9 violated any of the provisions of section 12-37-103, 12-37-104,
10 12-37-105, or 12-37-109 (3), the director may deny, revoke, or suspend
11 ~~any~~ A registration, issue a letter of admonition to a registrant, place a
12 registrant on probation, or apply for a temporary or permanent injunction
13 against a direct-entry midwife, through the attorney general, in any court
14 of competent jurisdiction, enjoining such direct-entry midwife from
15 practicing midwifery or committing any SUCH violation. ~~of the provisions~~
16 ~~of the said section 12-37-103, 12-37-104, 12-37-105, or 12-37-109 (3).~~
17 ~~Such~~ Injunctive proceedings UNDER THIS SUBSECTION (1) shall be in
18 addition to, and not in lieu of, any other penalties or remedies provided
19 in this article.

20 (2) (a) (I) ~~As an alternative to or in addition to a suspension or~~
21 ~~revocation of registration under subsection (3) of this section,~~ The
22 director may assess a civil penalty in the form of a fine, not to exceed five
23 thousand dollars, for VIOLATION OF A RULE OR ORDER OF THE DIRECTOR
24 OR any OTHER act or omission ~~enumerated in subsection (3) of this section~~
25 PROHIBITED BY THIS ARTICLE.

26 (II) THE DIRECTOR SHALL ADOPT RULES ESTABLISHING A FINE
27 STRUCTURE AND THE CIRCUMSTANCES UNDER WHICH FINES MAY BE

1 IMPOSED.

2 (b) Any moneys collected pursuant to this subsection (2) shall be
3 transmitted to the state treasurer, who shall credit such moneys to the
4 general fund.

5 (3) The director ~~has the power to~~ MAY deny, revoke, or suspend
6 ~~any~~ A registration or ~~to~~ issue a letter of admonition or place a registrant
7 on probation for any of the following acts or omissions:

8 (a) Any violation of ~~the provisions of~~ section 12-37-103,
9 12-37-104, 12-37-105, or 12-37-109 (3); ~~or any rule promulgated~~
10 ~~pursuant to section 12-37-106 (1) (a);~~

11 (b) Failing to provide any information required pursuant to, or to
12 pay any fee assessed in accordance with, section 12-37-103 or providing
13 false, deceptive, or misleading information to the division of registrations
14 that the direct-entry midwife knew or should reasonably have known was
15 false, deceptive, or misleading;

16 (c) FAILING TO RESPOND IN AN HONEST, MATERIALLY RESPONSIVE,
17 AND TIMELY MANNER TO A LETTER OF COMPLAINT FROM THE DIRECTOR;

18 (d) FAILING TO COMPLY WITH AN ORDER OF THE DIRECTOR,
19 INCLUDING AN ORDER PLACING CONDITIONS OR RESTRICTIONS ON THE
20 REGISTRANT'S PRACTICE;

21 ~~(e)~~ (e) Engaging in any act or omission that does not meet
22 generally accepted standards of safe care for women and infants, whether
23 or not actual injury to a ~~patient~~ CLIENT is established;

24 ~~(d)~~ (f) ABUSE OR habitual ~~intemperance with regard to~~ or
25 excessive use of a habit-forming drug, a controlled substance as defined
26 in section 12-22-303 (7), or ~~an alcoholic beverage~~ ALCOHOL;

27 ~~(e)~~ (g) ~~Has procured or attempted~~ PROCURING OR ATTEMPTING to

1 procure a registration in this or any other state or jurisdiction by fraud,
2 deceit, misrepresentation, misleading omission, or material misstatement
3 of fact;

4 ~~(f)~~ (h) ~~Has~~ HAVING had a license or registration to practice
5 direct-entry midwifery or any other health care PROFESSION OR occupation
6 suspended or revoked in any jurisdiction;

7 ~~(g)~~ (i) ~~Violation of~~ VIOLATING any law or regulation governing
8 the practice of direct-entry midwifery in another state or jurisdiction. A
9 plea of nolo contendere or its equivalent accepted by any state agency of
10 another state or jurisdiction may be considered to be the same as a finding
11 of violation for purposes of a proceeding under this article.

12 ~~(h)~~ (j) ~~Has falsified, failed~~ FALSIFYING, FAILING to make essential
13 entries in, or in a negligent manner ~~made~~ MAKING incorrect entries in
14 client records;

15 ~~(i)~~ (k) ~~Has been convicted~~ CONVICTION of a felony or ~~has had~~
16 ~~accepted~~ ACCEPTANCE by a court OF a plea of guilty or nolo contendere
17 to a felony. A certified copy of the judgment of a court of competent
18 jurisdiction of such conviction or plea shall be prima facie evidence of
19 such conviction.

20 ~~(j)~~ (l) ~~Has violated any provision of this article or has aided~~
21 AIDING or knowingly ~~permitted~~ PERMITTING any person to violate any
22 provision of this article; or

23 ~~(k)~~ (m) ~~Has advertised~~ ADVERTISING through newspapers,
24 magazines, circulars, direct mail, directories, radio, television, WEB SITE,
25 E-MAIL, TEXT MESSAGE, or otherwise that the registrant will perform any
26 act prohibited by this article.

27 (6) (a) The director or an administrative law judge ~~shall have the~~

1 ~~power to~~ MAY administer oaths, take affirmations of witnesses, and issue
2 subpoenas to compel the attendance of witnesses and the production of
3 all relevant papers, books, records, documentary evidence, and materials
4 in any hearing, investigation, accusation, or other matter coming before
5 the director. The director may appoint an administrative law judge
6 pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and
7 to make findings and report them to the director, including ~~but not limited~~
8 ~~to,~~ COPIES OF hospital and physician records. The provider of such copies
9 shall prepare the copies from the original record and shall delete the name
10 of the patient OR CLIENT, to be retained by the custodian of the records
11 from which the copies were made, but shall identify the patient OR CLIENT
12 by a numbered code. Upon certification by the custodian that the copies
13 are true and complete except for the patient's OR CLIENT'S name, the
14 copies shall be deemed authentic, subject to the right to inspect the
15 originals for the limited purpose of ascertaining the accuracy of the
16 copies. No privilege of confidentiality ~~shall exist~~ EXISTS with respect to
17 such copies and no liability ~~shall lie~~ LIES against the director or the
18 custodian or the director's or custodian's authorized employees for
19 furnishing or using such copies in accordance with this section.

20 (b) Upon failure of any witness to comply with such subpoena or
21 process, the district court of the county in which the subpoenaed person
22 or ~~licensee~~ REGISTRANT resides or conducts business, upon application by
23 the ~~board~~ or director with notice to the subpoenaed person or ~~licensee~~
24 REGISTRANT, may issue to the person or ~~licensee~~ REGISTRANT an order
25 requiring that person or ~~licensee~~ REGISTRANT to appear before the
26 director; to produce the relevant papers, books, records, documentary
27 evidence, or materials if so ordered; or to give evidence touching the

1 matter under investigation or in question. Failure to obey the order of the
2 court may be punished by the court as a contempt of court.

3 (7) (a) When a complaint or investigation discloses an instance of
4 misconduct that, in the opinion of the director, does not warrant formal
5 action by the director but that should not be dismissed as being without
6 merit, a letter of admonition may be issued and sent, by certified mail, to
7 the ~~licensee~~ REGISTRANT.

8 (b) When a letter of admonition is sent by the director, by certified
9 mail, to a ~~licensee~~ REGISTRANT, such ~~licensee~~ REGISTRANT shall be
10 advised that he or she has the right to request in writing, within twenty
11 days after receipt of the letter, that formal disciplinary proceedings be
12 initiated to adjudicate the propriety of the conduct upon which the letter
13 of admonition is based.

14 (c) If the request for adjudication is timely made, the letter of
15 admonition ~~shall be deemed~~ IS vacated and the matter shall be processed
16 by means of formal disciplinary proceedings.

17 (13) A person aggrieved by the final cease-and-desist order may
18 seek judicial review of the ~~board's~~ DIRECTOR'S determination or of the
19 ~~board's~~ DIRECTOR'S final order in a court of competent jurisdiction.

20 **SECTION 12.** 12-37-109, Colorado Revised Statutes, is
21 amended to read:

22 =====
23 **12-37-109. Assumption of risk - no vicarious liability -**
24 **legislative declaration.** (1) (a) The general assembly hereby finds,
25 determines, and declares that the authority granted in this article for the
26 provision of unlicensed midwifery services does not constitute an
27 endorsement of such practices, and that it is incumbent upon the

1 individual seeking such services to ascertain the qualifications of the
2 registrant direct-entry midwife. It is the policy of this state that
3 registrants shall be liable for their acts or omissions in the performance
4 of the services that they provide, and that no licensed physician, nurse,
5 prehospital emergency medical personnel, or health care institution shall
6 be liable for any act or omission resulting from the administration of
7 services by any registrant. The provisions of This subsection (1) shall
8 DOES not relieve any physician, nurse, prehospital emergency personnel,
9 or health care institution from liability for any willful and wanton act or
10 omission or any act or omission constituting gross negligence, or under
11 circumstances where a registrant has a business or supervised relationship
12 with any such physician, nurse, prehospital emergency personnel, or
13 health care institution. A physician, nurse, prehospital emergency
14 personnel, or health care institution may provide consultation or
15 education to the registrant without establishing a business or supervisory
16 relationship, AND IS ENCOURAGED TO ACCEPT REFERRALS FROM
17 REGISTRANTS PURSUANT TO THIS ARTICLE.

18 (b) The general assembly further finds, determines, and declares
19 that the limitation on liability provided in section 13-64-302, C.R.S., is
20 predicated upon full licensure, discipline, and regulatory oversight and
21 that the practice of unlicensed midwifery by registrants pursuant to this
22 article is authorized as an alternative to such full licensure, discipline, and
23 regulatory oversight and is therefore not subject to the limitations
24 provided in section 13-64-302, C.R.S.

25 (2) Nothing in this article shall be construed to indicate or imply
26 that a registrant providing services under this article is a licensed health
27 care provider for the purposes of reimbursement by any health insurer,

1 third party payer, or governmental health care program.

2 (3) ~~At such time as~~ IF the director finds that liability insurance is
3 available at an affordable price, ~~the direct-entry midwife~~ REGISTRANTS
4 shall be required to carry such insurance.

5 **SECTION 13.** 12-37-109.7, Colorado Revised Statutes, is
6 amended to read:

7 **12-37-109.7. Confidential files.** The director may keep
8 confidential all files and information concerning an investigation
9 authorized under this article until the results of ~~such~~ THE investigation are
10 provided to the director and either the complaint is dismissed or notice of
11 hearing and charges are served upon the ~~registrant~~ PERSON SUBJECT TO
12 THE INVESTIGATION.

13 **SECTION 14.** 13-21-115.5 (3) (c) (II) (C), Colorado Revised
14 Statutes, is amended to read:

15 **13-21-115.5. Volunteer service act - immunity - exception for**
16 **operation of motor vehicles.** (3) As used in this section, unless the
17 context otherwise requires:

18 (c) (II) "Volunteer" includes:

19 (C) A registered midwife governed by ~~the provisions of~~ article 37
20 of title 12, C.R.S., performing the practice of direct-entry midwifery, as
21 defined in section 12-37-102, ~~(2)~~, C.R.S., as a volunteer for a nonprofit
22 organization, a nonprofit corporation, a governmental entity, or a hospital;

23 **SECTION 15. Appropriation.** (1) In addition to any other
24 appropriation, there is hereby appropriated, out of any moneys in the
25 division of registrations cash fund created in section 24-34-105 (2) (b) (I),
26 Colorado Revised Statutes, not otherwise appropriated, to the department
27 of regulatory agencies, for allocation to the division of registrations, for

1 personal services, for the fiscal year beginning July 1, 2011, the sum of
2 two thousand dollars (\$2,000) cash funds, or so much thereof as may be
3 necessary, for the implementation of this act.

4 (2) In addition to any other appropriation, there is hereby
5 appropriated, out of any moneys in the division of registrations cash fund
6 created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not
7 otherwise appropriated, to the department of regulatory agencies, for
8 allocation to the executive director's office and administrative services,
9 for legal services, for the fiscal year beginning July 1, 2011, the sum of
10 four thousand eight hundred forty-two dollars (\$4,842) cash funds, or so
11 much thereof as may be necessary, for the implementation of this act.

12 (3) In addition to any other appropriation, there is hereby
13 appropriated to the department of law, for the fiscal year beginning July
14 1, 2011, the sum of four thousand eight hundred forty-two dollars
15 (\$4,842), or so much thereof as may be necessary, for the provision of
16 legal services to the department of regulatory agencies related to the
17 implementation of this act. Said sum shall be from reappropriated funds
18 received from the department of regulatory agencies out of the
19 appropriation made in subsection (2) of this section.

20 **SECTION 16. Effective date.** This act shall take effect July 1,
21 2011.

22 **SECTION 17. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.