Update from Medical Board Meeting on January 30th, 2004

faith gibson, LM, CPM

[Background text](#30j0zll) (report posted on website last month)

[Most recent Comments/Letter](http://docs.google.com/DOL%20letter%20edit%20Jan25%202004.htm) to Medical Board (Jan 30, 2004)

The Division of Licensing (DOL) meeting was held at the State Capital Building on Friday morning at 9am, January 30th. Between the DOL meeting in the morning and the general quarterly meeting in the afternoon I visited Senator Figueroa's office and was given the [affirmative opinion on clinical experience](#gjdgxs) that they solicited from the Office of the Legislative Counsel. However, I did not know about this opinion before the DOL meeting. I spoke at length to the DOL members about topics of interest to childbearing women and professionally-licensed midwives. [(see Jan 29th letter from California College of Midwives' to DOL members)](http://docs.google.com/DOL%20letter%20edit%20Jan25%202004.htm)

In particular, I discussed the dilemma presented to midwifery students *and their preceptors* relative to the policy letter sent to the *California College of Midwives*' on Dec 15, 2004 and to all California LMs in early January. I argued that the policy statement by the Board represented a misunderstanding of the law. First there is no law or criminal offense called the "unlicensed practice of midwifery", as professional midwives (both LMs and CNMs) do not enjoy any exclusive title to the care of normal childbearing women. Therefore any legal charge against a student or their LM preceptor would have to be based on the unauthorized practice of medicine. This would specifically prohibit unlicensed students from 'treating, diagnosing, prescribing or administering' (drugs) and to sever or penetrate human tissue (beyond the severing of the umbilical cord).

However, 99% of all midwifery care does not include any of these five prohibited medical activities for either LM or a student. Doulas, dads, family members and assistants to LMs all provide various aspects of non-medical midwifery care as do L&D nurses and doctors. In this regard, the vast majority of "clinical" experience would be not be illegal for either student or preceptor, since the student is **not practicing medicine without a license**. Secondly, it is vital that the educational preparation of midwifery students include exposing them to clinical situations that help develop the **most important attribute of any licensed professional --- judgment skills**. In order to do this, we must deal successfully with this educational issue so that students can continue to be directly involved in clinical practice as preparation for eventual licensure and practice independently as safe and effective midwives. (see opinion of Legislative Counsel below)

I asked the Board to reconvene the midwifery committee or task force so as to deal with this subject in depth. At present, **a meeting of the midwifery task force is scheduled for the next Board meeting in early May**. For sure that meeting will deal with the **application by Maternidad la luz** in New Mexico to qualify their students to set for the LM licensing exam. In addition, they will ponder the letter from the Legislative Counsel. We hope they will also broaden the discussion on clinical experience  **to better define the specific circumstances under which students could continue to obtain appropriate clinical experiences, as referred to in the Legislative Counsel's opinion** (unless or until the LMPA is amended to provide separate authority for student practice).

Interested midwives should plan on attending and should meet with Frank Cuny and I prior to the Board meeting to learn pertinent background information and to come together on what we hope to accomplish at this particular Board meeting. In the mean time, Frank and I will be working with Senator Figueroa's staff  and the MBC, with the hope of developing an effective, mutually acceptable plan. CAM officers or other reps are encouraged to participate in this preparatory process with the MBC and Senator Figueroa. If you want specifics, **call me at 650 / 328-8491 or Frank at 888/557-8092**. I don't do email due to the avalanche of spam and porno.

In the mean time, the safest policy for LM preceptors is that their **students do not perform non-emergency medical procedures** -- injections, starting and administering IV fluids, repair of perineal lacerations and performing episiotomies and/or manual removal of placentas in non-emergent situations. Any layperson can do anything 'reasonable' (except for operative deliveries such as forceps or cesareans) in a bona fide medical emergency (defined as **no doctor present**), which would include episiotomy for fetal distress and resuscitation of baby in precipitous births that occur before the LM arrives or help of paramedics can be obtained. Students **cannot legally provide primary midwifery care independently from their preceptor** -- that is have a midwifery client load of their own, charge for midwifery care separately from the LM, etc. However any citizen of California can provide and charge for labor support -- simply being a  *midwifery student* does not effect your fundamental right to provide labor support.

**The following opinion from the Legislative Counsel was the result of a very specifically worded question by a staff person from Senator Figueroa's office.  It is not the end all and be all on the topic of midwifery students but it does fundamentally support the clinical experience of midwifery students as lawful.**

**Legislative Counsel of California**

**Office of Legislative Counsel**

**State Capitol Suite 3021**

**Sacramento, CA 95814**

**916 / 341-8000  fax  916 / 341-8020**

**January 28, 2004**

**Honorable Liz Figueroa**

**4061 State Capital**

**Midwife Students -- #22464**

**Dear Senator Figueroa:**

**Question**

    May a  student participating in an accredited postsecondary midwifery education program assist in the care of a pregnant woman by taking blood pressures, listening to the baby's heartbeat and talking to and asking questions of the pregnant women in the presence of a licensed midwife who is providing care to the pregnant women within the scope of his or her practice?

**Opinion**

        A  student participating in an accredited postsecondary midwifery education program assist in the care of a pregnant woman by taking blood pressures, listening to the baby's heartbeat and talking to and asking questions of the pregnant women in the presence of a licensed midwife who is providing care to the pregnant women within the scope of his or her practice.

**Analysis**

**[Analysis included the legislative background of the LMPA and a reprint of the text for section 2507 and 2515.5]**

It continues with the text of midwifery educational regulations under Section 1379.30 of Title 16 of the California Cold of Regulations, which states that:

"1379.30. The midwifery education program shall prepare the midwife to practice as follows:

                    "(a) Management of normal pregnancy.

                    "(b) Management of normal labor and delivery in all birth settings, including the following, when indicated:

                          "(1) Administration of intravenous fluids, analgesics, postpartum oxytocics and RhoGAM.

                          "(2) Amniotomy during labor.

                          "(3) Application of external internal monitoring devices.

                          "(4) Application of local anesthetics, paracervical blocks, pudental blocks, and local infiltration.

                          "(5) Episiotomy. {editor's note: can be done for fetal distress under emergency exemptions clause}

                          "(6) Repair of episiotomies and lacerations.

                          "(7) Resuscitation of the newborn. {editor's note: resuscitation can be done under emergency exemptions clause}

                    "(c) Management of the normal postpartum period.

                    "(d) Management of the normal newborn care, including administration of vitamin K and eye prophylaxis.

                    "(e) Management of family planning and routine gynecology care including barrier methods of contraception

                          such as diaphragms and cervical caps." (emphasis added.)

**Excerpt from bottom of page 5 and page 6**

**Nothing in the act or in the related regulations adopted by the board speaks directly** to the actions that may be taken by a midwife student in  the presence of a licensed midwife.

            However, **a statute is to be construed so as to harmonize its various parts within the legislative purpose of the statute as a whole** (Wells v. Marina City Properties, Inc (1981) 29 Cal.3d 781, 788).

            In particular, the skills that a midwifery education program is to impart to its students include communications skills, (.....) and obtaining or updating a defined and relevant data base for assessment of the health status of the client, identifying problems based upon correct interpretation of the data base, preparing a defined needs or problem list or both with corroboration from the client, and assuming direct responsibility for the development of comprehensive, supportive care for the  client (....). In addition, under the adopted regulations, a midwifery education program is required to prepare the midwife student to manage a normal pregnancy and to apply external or internal monitoring devices in the management of normal labor and delivery (....). Because the education and training process for a person seeking licensure as a midwife requires clinical practice and preparation, we think that process necessarily contemplates that the person will gain that practice and preparation through hands-on experience, rather than through instruction along. In this context, taking blood pressures, listening to the baby's heartbeat, and talking to and asking questions of the pregnant women in the presence of a licensed midwife who is providing care to the pregnant women within the scope of his or her practice.

Very truly your, Diane F. Boyer-Vine

Legislative Counsel

by L. Erik Lange

Deputy Legislative Counsel

LEL:dsc

**Original Bulletin posted on Dec 15, 2003**

**letter to California College Midwives from the Medical Board of CA**

**RE: Matriculated Midwifery Students:**

**"....The statutes dealing with  midwifery do not contain any ... authority (to obtain clinical experience).  Given these facts, a student  who actively participates in the provision of midwifery care is practicing midwifery without a license and the supervising midwife is aiding and abetting this practice." [editor's note: i.e., aiding and abetting the illegal practice of medicine]**

**"We are developing language to submit to the Board as a proposal for statutory change. Until such a change is passed by the legislature and signed into law by the govoernor, a student may not actively participate in the provision of care."**

**Signed Cindy James, Chief, Licensing Program, MBC // cc: Frank Cuny, CCFHF, Office of Senator Figueroa**

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Old News  ~ Nov 7th 2003 ~  MBC Hearing on Midwifery Regulations >> Supervision & Standard of Care  ~ The Division of Licensing choose not to vote on the regulation. One of the Board member's stated that AGOG and CMA had indicted that they would sue the Board if the regulation was implemented.  To avoid this litigation, they moved to send the regulation to the state Attorney General's office for a formal written opinion as to whether the regulation would be considered "legal". This may take several months.