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**Preliminary Comments of the
Big Push for Midwives Campaign**

Submitted by:

The Big Push for Midwives Campaign
(A Campaign of the National Birth Policy Institute)
Steering Committee:
Katherine Prown, Campaign Manager
Steffany Hedenkamp, Communications Director
Pamela Maurath
Jane Peterson, CPM
Susan Jenkins
www.birthcenters.org

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Comments of The Big Push for Midwives Campaign

The Big Push for Midwives Campaign is a coalition of state consumer groups and state midwife professional societies that was organized in 2007 to provide mutual support for a national state-by-state strategy to advocate for licensing laws for Certified Professional Midwives (CPMs). The Big Push for Midwives Campaign represents tens of thousands of people in the United States advocating on behalf of expanded access to CPMs, midwives who undergo specialized clinical training in out-of-hospital maternity care. The mission of The Big Push for Midwives is to provide strategic planning and message development for state grassroots consumer advocacy and midwife groups that are actively working on legislation to license CPMs, envisioning the goal of licensure of CPMs in all 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

At the present time, 28 states provide by statute for licensure (26) or other recognition (Maine and Missouri) of CPMs and other "direct entry midwives" ("DEMs") (midwives who entered the study and practice of midwifery directly, without the requirement of a prior nursing degree). The Big Push for Midwives website features an interactive map <http://pushformidwives.org/what-we-do/pushstates-in-action/> with information about the legal status of midwives in each state. This same page also lists the consumer and midwife groups from each state that are part of the grassroots coalition. A link on this page leads to a chart which provides information regarding the order in which states enacted licensing legislation and the status of the legislative campaign in each state. Another chart on this page discusses the reasons some women may prefer to give birth at home.

In certain the other 22 states, D.C., Puerto Rico, the Virgin Islands, and Guam, midwifery practice is either illegal or in an uncertain status. In many of these states, the practice of midwifery by anyone other than a Certified Nurse-Midwife is considered the unauthorized practice of medicine, subjecting the midwife to the risk of arrest on criminal charges. Other states without licensure laws restrict midwives from practicing through proceedings such as administrative complaints and cease and desist orders issued by boards of medicine or of nursing.

In states that do license CPMs or other DEMs, state disciplinary boards or advisory committees to existing agencies, have been established and regulations developed regarding practice, education, and certification. The CPM credential was developed in the 1990s by the North American Registry of Midwives (NARM), which administers a national examination that is accepted by most if not all states that presently regulate CPMs. The NARM website (www.narm.org) and the websites of the Midwives Alliance of North America (MANA) (www.mana.org) and the National Association of Certified Professional Midwives (NACPM) (www.nacpm.org) provide more information regarding the profession of midwifery and the CPM credential.

Licensing midwives benefits consumers in several ways. First, it improves consumer access to midwives, since it is far easier to hire a midwife for your birth if she can practice legally, advertise her services online and in the local Yellow Pages, and own or work on local birth centers. In states without licensure or recognition of certification statutes, midwives often practice in an underground economy that is not easily accessible to outsiders. Second, having a state professional board provides consumers with information about midwives in their community, increasing transparency and helping consumers choose midwives on the basis of known

credentials.

Third, licensure provides consumers with increased options of coverage of midwife services by health plans. Although MCOs and other health plans have been slow to add coverage for home birth, birth centers, and midwife services, licensure makes it more likely that the service will be covered. For example, federal Medicaid rules permit state Medicaid plans to include as eligible providers any health professional group licensed in that state. So far, twelve states (Alaska, Arizona, California, Florida, Idaho, Minnesota, New Hampshire, New Mexico, Oregon, South Carolina, Vermont, and Washington) have added Licensed direct-entry midwives as providers. In 2010, as part of the ACA, Congress mandated Medicaid coverage in all states of professional services provided in birth centers by all categories of licensed or state-recognized midwives. The Harkin Amendment, section 2706 of to the ACA, prohibits health plans from discriminating against any category of health care provider that is licensed in the state where the health plan operates – specifically banning categorical discrimination with respect to payment for services and inclusion of the provider category in the network. This is not an “any willing provider” type of law, but merely ensures that consumers will have a choice among types of providers.

Finally, from a consumer protection standpoint, consumers should have the same opportunity to file complaints with a professional disciplinary board against midwives as they do with respect to other health professionals. Leaving midwives unregulated leaves consumer protection to the more unwieldy fall-back of criminal prosecution for unauthorized practice – a somewhat drastic and expensive overkill and misuse of public resources. Additionally, the threat of criminal prosecution or civil cease and desist orders poses a continual threat to continuity of care for consumers whose only option for out-of-hospital birth is an unlicensed midwife. We are aware of a few instances in which families who had a home births with midwives in states without a licensing mechanism have been subjected to investigations and custody disruptions by local child welfare agencies.

The primary opposition - and, in many cases, the only opposition – to state laws that would license and regulate midwives has been from organized medicine, usually the state medical society and/or state chapter of the American College of Obstetricians and Gynecologists. In some states the state nurses association has also mounted opposition. Much of this opposition has been coordinated and subsidized by the American Medical Association. In 2005, the AMA formed a coalition called the Scope of Practice Partnership (“SOPP”) with state medical societies and national physician specialty organizations. A 2010 article from the Journal of Pediatric Health Care¹ described the formation and operation of SOPP as follows:

The SOPP is a coalition convened by the American Medical Association (AMA) in 2005 with various physician organizations that engage in tracking scope of practice legislative

¹Lindeke, LL, Thomas, KK, The SOPP and the Coalition for Patients' Rights: Implications of Continuing Interprofessional Tension for PNP's. Journal of Pediatric Health Care. 2010; 24(1): 62-65 (reproduced online in Medscape at <http://www.medscape.com/viewarticle/714802>)

and regulatory efforts throughout the United States. The SOPP funds investigations into the educational preparation and licensure requirements of health care providers with the goal of opposing autonomous practice of all providers except physicians. The SOPP monitors state legislation and regulation regarding scope of practice qualifications, education, and academic requirements of "non-physician clinicians" and provides this information to its members as well as to media and policy makers. The group is influential with federal and state legislators and proposes to oversee and control practice of all "allied health professionals" in the interest of quality patient care. Initially, state medical societies joining SOPP were from Massachusetts, Colorado, Texas, California, New Mexico and Maine; many other state societies now also participate. In addition to the AMA and its state societies, six medical specialty organizations are also part of the SOPP: The American Society of Anesthesiologists (ASA), American Society of Plastic Surgeons, American Academy of Otolaryngology-Head and Neck Surgery, American Academy of Orthopedic Surgeons, American Academy of Ophthalmology, and American Psychiatric Association. Each organization contributes a substantial sum annually to finance SOPP activities.

“SOPP targets all providers who are not physicians, not just NPs. Physical therapists and chiropractors have been targeted by SOPP, as well as psychologists desiring prescriptive privileges and pharmacists seeking to directly work with patients in medication adjustment roles. SOPP's use of the term "allied health professionals" for all providers who are not physicians ignores the long autonomous histories of other professions, including nursing. SOPP funds studies to examine "allied health professionals" in order to create reports for legislators, and it actively campaigns against state and federal legislation addressing the practice of NPs and others. Numerous AMA resolutions have been passed that reflect SOPP goals, such as the 2005 AMA Resolution 814 entitled "Limited Licensure Health Care Provider Training and Certification Standards" and the 2009 AMA Report 28 "Collaborative Practice Agreements Between Physicians and Advance Practice Nurses." The SOPP is about compensation for care, turf, and fear of change.”

In 2008, the AMA House of Delegates favorably reported out a resolution sponsored by the delegate from ACOG to advocate for legislation to prevent home births. A copy of the resolution is enclosed, along with a copy of the pediatric nurse practitioners article quoted above. We have documents that indicate that the AMA and state medical societies targeted CPM legislation over the next several years following this resolution. The Big Push leadership recognizes that legislative activity, including AMA's and ACOG's advocacy for potentially anticompetitive motivations against CPM scope of practice laws, is protected under the First Amendment from antitrust enforcement activity by the *Noerr-Pennington* line of cases. This information regarding the AMA, ACOG, and SOPP are provided primarily to demonstrate that the only real opposition to the laws for which we advocate comes from organized medicine, not from consumers or objective third parties. Individual instances of medical society opposition, however, and of medical board regulation attempts to regulate or discipline midwives, might cross the line, potentially losing entitlement to *Noerr-Pennington* and/or state action defense. We expect that some of our state members may wish to file comments describing specific instances between now and April 30.

The Big Push for Midwives Campaign appreciates the opportunity to provide this

information to the Federal Trade Commission. We have become aware of the Commission's competition advocacy program and recent policy paper on advanced practice registered nurse legislation and look forward to working with your staff on similar issues involving legislative efforts to restrict midwife practice.

Respectfully submitted,

The Big Push for Midwives Campaign