

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2008

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Legislative Document

No. 2253

H.P. 1616

House of Representatives, March 10, 2008

### An Act To License Certified Professional Midwives

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Reported by Representative SMITH of Monmouth for the Joint Standing Committee on Business, Research and Economic Development pursuant to Resolve 2007, chapter 115.

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed under Joint Rule 218.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §12004-A, sub-§49** is enacted to read:

3 **49.**

4 Board of Licensed Midwives                      Expenses Only                      32 MRSA §17402

5 **Sec. 2. 32 MRSA c. 139** is enacted to read:

6 **CHAPTER 139**

7 **MIDWIVES**

8 **§17401. Definitions**

9 As used in this chapter, unless the context otherwise indicates, the following terms  
10 have the following meanings.

11 **1. Board.** "Board" means the Board of Licensed Midwives under section 17402.

12 **2. Certified professional midwife.** "Certified professional midwife" means a  
13 person who has knowledge of and experience providing midwifery in out-of-hospital  
14 settings and has met the standards for certification set by the North American Registry of  
15 Midwives.

16 **3. Informed choice.** "Informed choice" means a written disclosure of specific  
17 information to any person to whom midwifery is provided. This disclosure includes, but  
18 is not limited to, the certified professional midwife's education, experience and  
19 credentials, the midwifery model of care, a notice of the certified professional midwife's  
20 professional liability insurance coverage status and the board's contact information.

21 **4. Licensed midwife.** "Licensed midwife" means a person who meets the certified  
22 professional midwife requirements of the North American Registry of Midwives and who  
23 meets the eligibility criteria and standard of care for a certified professional midwife  
24 established by the board.

25 **5. Midwife.** "Midwife" means a person who is trained to give care and advice to  
26 women during pregnancy, labor, birth and the post-birth period on the midwife's own  
27 responsibility and to care for the newly born infant.

28 **6. Midwifery.** "Midwifery" means the provision of care, support and education  
29 consistent with a midwife's training, education and experience to women and their  
30 newborns throughout the childbearing cycle. Care provided by a midwife may occur in  
31 any setting, including in a home, freestanding birthing center, office or medical facility.  
32 Such care, support and education may relate to:

33 A. Measures that promote and maintain the health of the mother and baby;

- 1        B. The detection of abnormal conditions;
- 2        C. The procurement of appropriate medical assistance;
- 3        D. The execution of emergency measures;
- 4        E. The provision of newborn care;
- 5        F. The provision of well-woman health care; and
- 6        G. The principles of informed choice.

7        **7. North American Registry of Midwives.** "North American Registry of  
8 Midwives" means the international certification agency whose mission is to establish and  
9 administer certification for the credential of "certified professional midwife" or its  
10 successor organization.

11        **8. National Association of Certified Professional Midwives.** "National  
12 Association of Certified Professional Midwives" means a national professional  
13 organization of certified professional midwives or its successor organization.

14        **§17402. Board of Licensed Midwives**

15        **1. Establishment and membership.** There is established within the Department of  
16 Professional and Financial Regulation, in accordance with Title 5, section 12004-A,  
17 subsection 49, the Board of Licensed Midwives. The board consists of 7 members  
18 appointed by the Governor:

- 19        A. Four certified professional midwives;
- 20        B. One consumer;
- 21        C. One certified nurse midwife; and
- 22        D. One physician who works with midwives.

23        **2. Terms of appointment.** Members are appointed for 3-year terms. A member of  
24 the board may be removed from office for cause by the Governor.

25        **3. Meetings.** The board shall meet each January to select a chair and for other  
26 purposes. At least one additional meeting must be held before the end of each calendar  
27 year. Other meetings may be convened at the call of the chair or the written request of  
28 any 2 board members. A majority of the members of the board constitutes a quorum for  
29 all purposes.

30        **4. Vacancy.** Any vacancy in the board must be filled by appointment by the  
31 Governor of a person of the same category as the board member being replaced to hold  
32 office for the unexpired term.

33        **§17403. Powers and duties of the board**

34        The board has the powers and duties set forth in this section in addition to all other  
35 powers and duties set forth in this chapter.

36        **1. Duties.** The board shall:

- 1        A. Make and adopt rules necessary to administer this chapter;
- 2        B. Define a protocol and formulary for drug use by licensed midwives, including but  
3        not limited to antihemorrhagic medications and oxygen;
- 4        C. Adopt the National Association of Certified Professional Midwives standards of  
5        care and specific rules defining scope and practice standards;
- 6        D. Determine fees for application for licensure, for initial licensure and for renewal  
7        within fee caps established by section 17409;
- 8        E. Ensure that licensed midwives serving the public meet minimum standards of  
9        proficiency and competency to protect the health, safety and welfare of the public;
- 10       F. Administer and enforce the provisions of this chapter and any rules adopted by the  
11       board under that authority granted in this chapter;
- 12       G. Maintain a record of its acts and proceedings, including the issuance, refusal,  
13       renewal, suspension and revocation of licenses;
- 14       H. Maintain a roster of all licensed midwives licensed under this chapter that  
15       indicates:
- 16            (1) The name of the licensee;
- 17            (2) The licensee's current professional office address;
- 18            (3) The date of issuance and the number of the licensee's license; and
- 19            (4) Whether the licensee is in good standing with the board, including:
- 20                    (a) Any restrictions or limitations on an individual's license;
- 21                    (b) A record of any revocations or suspensions; and
- 22                    (c) Any information that the board directs must be included in a member's  
23                    record;
- 24        I. Keep all applications for licensure as a permanent record; and
- 25        J. Keep the records of the board open to public inspection at all reasonable times.
- 26        **2. Complaints.** The board shall investigate, or cause to be investigated, all  
27        complaints made to it and all cases of noncompliance with this chapter.
- 28        **3. Hearings.** The board may conduct hearings to assist with investigations, to  
29        determine whether grounds exist for suspension, revocation or denial of a license or to  
30        fulfill its responsibilities under this chapter as the board otherwise determines necessary.
- 31        The board may not refuse to renew a license for any reason other than failure to pay the  
32        required fee, unless it has afforded the licensee an opportunity for an adjudicatory  
33        hearing. The board shall hold an adjudicatory hearing upon the written request of any  
34        person who is denied a license without hearing for any reason other than failure to pay a  
35        required fee. The written request for a hearing must be received by the board within 30  
36        days of the applicant's receipt of written notice of the denial of the application. The  
37        written notice of denial must set forth the reasons for the denial and the applicant's right

1 to request a hearing. The board shall conduct hearings in conformity with the Maine  
2 Administrative Procedure Act to the extent applicable.

3 **4. Subpoena power; administration of oaths; power to compel production of**  
4 **documents.** The board may subpoena witnesses, administer oaths in any hearing or  
5 disciplinary proceedings and compel, by subpoena duces tecum, the production of papers  
6 and records.

7 **5. Witness fees.** A witness summoned before the board must be paid the same fee as  
8 a witness summoned to appear before the Superior Court and that summons has the same  
9 effect as though issued for appearance before the Superior Court.

10 **6. Suspension and revocation.** The board may suspend or revoke a license pursuant  
11 to Title 5, section 10004. The following are grounds for an action to refuse to issue,  
12 modify, suspend, revoke or refuse to renew the license of an individual licensed under  
13 this chapter:

14 A. The practice of fraud or deceit in obtaining a license under this chapter or in  
15 connection with services rendered as a licensed midwife;

16 B. A legal finding of mental incompetence;

17 C. Any gross negligence, incompetence or misconduct in the performance of  
18 midwifery;

19 D. Failing to obtain informed consent;

20 E. Disregarding a client's dignity or right to privacy as to person, condition,  
21 possessions or medical record;

22 F. Failing to file or record any medical report as required by law, impeding or  
23 obstructing the filing or recording of the report or inducing another to fail to file or  
24 record the report;

25 G. Breaching a statutory, common law, regulatory or ethical requirement of  
26 confidentiality with respect to a person who is a client, unless ordered by the court;

27 H. Inappropriately delegating midwifery duties;

28 I. Using advertising or an identification statement that is false, misleading or  
29 deceptive;

30 J. Using any letters, words or insignia indicating or implying that the person is a  
31 licensed midwife, unless the person is licensed in accordance with this chapter,  
32 except that a person may use any designation issued by a state or nationally  
33 recognized organization, as long as the name of that organization is clearly used with  
34 the designation; or

35 K. Submitting a birth certificate known by the person to be false or fraudulent.

36 **§17404. Civil violations; penalties**

37 A person who violates any provision of this chapter for which a penalty is not  
38 prescribed commits a civil violation for which a fine of not more than \$1,000 may be  
39 adjudged.

1 **§17405. Criminal violations; penalties**

2 **1. Violation.** A person, including a corporation, association or individual, may not:

3 A. Use in connection with the person's name a designation tending to imply that the  
4 person is a licensed midwife unless so licensed under this chapter; or

5 B. Use prescriptive medications, except oxygen, while engaged in the practice of  
6 midwifery when not licensed under this chapter.

7 **2. Class E crime.** A person who violates subsection 1 commits a Class E crime.

8 The State may bring an action in Superior Court to enjoin a person from violating this  
9 chapter regardless of whether proceedings have been or may be instituted in District  
10 Court or whether criminal proceedings have been or may be instituted.

11 **§17406. Immunity**

12 A health care provider, as defined in Title 24, section 2502, subsection 2, is immune  
13 from civil liability for any injuries resulting from the acts or omissions of a licensed  
14 midwife. Licensed physicians are immune from civil liability when consulting or  
15 collaborating with a licensed midwife or accepting transfer of care of clients who are  
16 outside of the scope of practice of a licensed midwife.

17 **§17407. Rulemaking**

18 Rules adopted by the board pursuant to this chapter are routine technical rules as  
19 defined in Title 5, chapter 375, subchapter 2-A.

20 **§17408. Licensure**

21 **1. Licensure required.** A person may not practice or profess to practice as a  
22 licensed midwife unless that person holds a current and valid license from the board.

23 **2. Eligibility.** To be eligible to apply for a license to practice as a licensed midwife,  
24 an applicant must meet requirements regarding education and experience as established  
25 by the board. These requirements must include:

26 A. Certification as a certified professional midwife; and

27 B. An agreement to practice according to the scope and standards of practice as  
28 required by rules.

29 **3. Exceptions.** This chapter does not apply to:

30 A. Certified nurse midwives licensed as advanced practice registered nurses under  
31 Title 32, chapter 31;

32 B. Certified midwives authorized under the State Board of Nursing to practice in the  
33 State, unless they are licensed midwives;

34 C. Licensed physicians or other licensed health care providers authorized to provide  
35 midwifery; and

1           D. Student midwives working under supervision of a licensed midwife.  
2 Notwithstanding this subsection, certified nurse midwives who become licensed  
3 midwives remain subject to the jurisdiction of the State Board of Nursing as well as to the  
4 provisions of this chapter.

5           **§17409. Fees**

6           The Director of the Office of Licensing and Registration within the Department of  
7 Professional and Financial Regulation may establish by rule fees for purposes authorized  
8 under this chapter in amounts that are reasonable and necessary for their respective  
9 purposes, except that the fee for any application may not exceed \$200 and the fee for  
10 initial and renewal licensure may not exceed \$675 annually. Rules adopted pursuant to  
11 this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

12           **§17410. Application for renewal**

13           **1. Requirements.** Every 3 years the Director of the Office of Licensing and  
14 Registration within the Department of Professional and Financial Regulation or board  
15 shall forward a renewal form to each licensed midwife. The completed form must  
16 include verification that, during the preceding 3 years, the licensed midwife has  
17 maintained current certification with the North American Registry of Midwives. Upon  
18 receipt of the completed form and of the renewal fee, the board shall issue renewal  
19 licenses to applicants who qualify under this section.

20           **2. Late renewal.** The board shall renew a license that has lapsed for a period of 3  
21 years or less upon receipt of the late renewal penalty, a reinstatement fee and an  
22 application for renewal that shows that the person meets the eligibility requirements of  
23 this chapter and that all requirements for renewal, including continuing education, have  
24 been satisfied. A person may not be required to pay renewal fees for lapsed years. The  
25 board may adopt rules to ensure that an applicant whose license has lapsed for a period  
26 greater than 3 years may be eligible for licensing, but such rules may not establish  
27 requirements greater than the eligibility requirements of this chapter.

28           **§17411. Title and abbreviation**

29           An individual who holds a current license to practice midwifery in this State has the  
30 right to use the title "licensed midwife" and the abbreviation "L.M." No other individual  
31 may assume the title or use the abbreviation or other words, letters, signs or devices to  
32 indicate that the individual using the same is a licensed midwife.

33           **§17412. Administration of medication**

34           A licensed midwife who, in the exercise of care, is authorized by the board to  
35 perform selected activities in the administration of medications may administer certain  
36 medications as defined by protocols established by the board, including, but not limited  
37 to, antihemorrhagic medications and oxygen.

38           **Sec. 3. Initial appointments to the Board of Licensed Midwives.** The  
39 Governor, within 60 days following the effective date of this Act, shall appoint 2 board



1 members for a term of one year, 2 for a term of 2 years and 3 for a term of 3 years to the  
2 Board of Licensed Midwives pursuant to the Maine Revised Statutes, Title 32, section  
3 17402.

4 **SUMMARY**

5 This bill establishes a license for certified professional midwives and creates the  
6 Board of Licensed Midwives within the Department of Professional and Financial  
7 Regulation.