

1 **DIRECT-ENTRY MIDWIFE LICENSING ACT**

2 2002 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Parley G. Hellewell**

5 **This act modifies the Occupations and Professions Code by enacting the Direct-entry**
6 **Midwife Licensing Act and amending related provisions of the Occupations and Professions**
7 **Code and the Judicial Code. The act provides for licensure of direct-entry midwives by the**
8 **Division of Occupational and Professional Licensing. The act provides for definitions**
9 **relating to the practice of direct-entry midwives. The act creates the Direct-entry Midwives**
10 **Education and Enforcement Fund and sets standards for its use. The act creates the**
11 **Direct-entry Midwife Licensing Board and sets forth its membership and duties. The act**
12 **requires the division to establish a Direct-entry Midwife Formulary Committee and a**
13 **direct-entry midwife formulary to define which prescription drugs and devices can be**
14 **prescribed and administered by direct-entry midwives and to provide guidelines for their**
15 **use. The act sets forth the qualifications for licensure. The act provides for exemptions from**
16 **licensure. The act guarantees the right of parents to deliver their baby where, when, how,**
17 **and with whom they choose. The act provides for disciplinary action, including**
18 **administrative penalties, against licensees. The act defines and provides penalties for**
19 **unlawful and unprofessional conduct. The act sets standards for consultation, collaboration,**
20 **referral, and transfer to or with other health care providers and sets standards for liability**
21 **under those circumstances. The act brings direct-entry midwives within the scope of the**
22 **Health Care Providers Immunity From Liability Act.**

23 This act affects sections of Utah Code Annotated 1953 as follows:

24 AMENDS:

25 **58-13-2**, as last amended by Chapter 160, Laws of Utah 2000

26 **58-13-3**, as last amended by Chapter 160, Laws of Utah 2000

27 **78-14-3**, as last amended by Chapter 288, Laws of Utah 1998



28 ENACTS:

- 29 **58-76-101**, Utah Code Annotated 1953
- 30 **58-76-102**, Utah Code Annotated 1953
- 31 **58-76-103**, Utah Code Annotated 1953
- 32 **58-76-201**, Utah Code Annotated 1953
- 33 **58-76-202**, Utah Code Annotated 1953
- 34 **58-76-301**, Utah Code Annotated 1953
- 35 **58-76-302**, Utah Code Annotated 1953
- 36 **58-76-303**, Utah Code Annotated 1953
- 37 **58-76-304**, Utah Code Annotated 1953
- 38 **58-76-305**, Utah Code Annotated 1953
- 39 **58-76-401**, Utah Code Annotated 1953
- 40 **58-76-402**, Utah Code Annotated 1953
- 41 **58-76-501**, Utah Code Annotated 1953
- 42 **58-76-502**, Utah Code Annotated 1953
- 43 **58-76-503**, Utah Code Annotated 1953
- 44 **58-76-601**, Utah Code Annotated 1953
- 45 **58-76-602**, Utah Code Annotated 1953
- 46 **58-76-603**, Utah Code Annotated 1953

47 *Be it enacted by the Legislature of the state of Utah:*

48 Section 1. Section **58-13-2** is amended to read:

49 **58-13-2. Emergency care rendered by licensee.**

50 A person licensed under Title 58, Occupations and Professions, to practice as any of the
51 following health care professionals, who is under no legal duty to respond, and who in good faith
52 renders emergency care at the scene of an emergency gratuitously and in good faith, is not liable
53 for any civil damages as a result of any acts or omissions by the person in rendering the emergency
54 care:

- 55 (1) osteopathic physician;
- 56 (2) physician and surgeon;
- 57 (3) naturopath;
- 58 (4) dentist or dental hygienist;

- 59 (5) chiropractic physician;
- 60 (6) physician assistant;
- 61 (7) optometrist; [~~or~~]
- 62 (8) nurse licensed under Section 58-31b-301[~~;~~]; or
- 63 (9) direct-entry midwife.

64 Section 2. Section **58-13-3** is amended to read:

65 **58-13-3. Qualified immunity -- Health professionals -- Charity care.**

66 (1) (a) The Legislature finds many residents of this state do not receive medical care and
67 preventive health care because they lack health insurance or because of financial difficulties or
68 cost. The Legislature also finds that many physicians, charity health care facilities, and other
69 health care professionals in this state would be willing to volunteer medical and allied services
70 without compensation if they were not subject to the high exposure of liability connected with
71 providing these services.

72 (b) The Legislature therefore declares that its intention in enacting this section is to
73 encourage the provision of uncompensated volunteer health care in charity care settings in
74 exchange for a limitation on liability for the health care facilities and health care professionals who
75 provide those volunteer services.

76 (2) As used in this section:

77 (a) "Health care facility" means any clinic or hospital, church, or organization whose
78 primary purpose is to sponsor, promote, or organize uncompensated health care services for people
79 unable to pay for health care services.

80 (b) "Health care professional" means individuals licensed under Title 58, Occupations and
81 Professions, as physicians and surgeons, osteopaths, podiatrists, optometrists, chiropractors,
82 dentists, dental hygienists, registered nurses, certified nurse midwives, [~~and~~] other nurses licensed
83 under Section 58-31b-301, and direct-entry midwives.

84 (c) "Remuneration or compensation":

85 (i) (A) means direct or indirect receipt of any payment by the physician and surgeon, health
86 care facility, other health care professional, or organization, on behalf of the patient, including
87 payment or reimbursement under medicare or medicaid, or under the state program for the
88 medically indigent on behalf of the patient; and

89 (B) compensation, salary, or reimbursement to the health care professional from any source

90 for the health care professional's services or time in volunteering to provide uncompensated health
91 care; and

92 (ii) does not mean any grant or donation to the health care facility used to offset direct
93 costs associated with providing the uncompensated health care such as medical supplies or drugs.

94 (3) A health care professional who provides health care treatment at a health care facility
95 is not liable in a medical malpractice action if:

96 (a) the treatment was within the scope of the health care professional's license under this
97 title;

98 (b) neither the health care professional nor the health care facility received compensation
99 or remuneration for the treatment;

100 (c) the acts or omissions of the health care professional were not grossly negligent or
101 willful and wanton; and

102 (d) prior to rendering services, the health care professional disclosed in writing to the
103 patient, or if a minor, to the patient's parent or legal guardian, that the health care professional is
104 providing the services without receiving remuneration or compensation and that in exchange for
105 receiving uncompensated health care, the patient consents to waive any right to sue for
106 professional negligence except for acts or omissions which are grossly negligent or are willful and
107 wanton.

108 (4) A health care facility which sponsors, promotes, or organizes the uncompensated care
109 is not liable in a medical malpractice action for acts and omissions if:

110 (a) the health care facility meets the requirements in Subsection (3)(b);

111 (b) the acts and omissions of the health care facility were not grossly negligent or willful
112 and wanton; and

113 (c) the health care facility has posted, in a conspicuous place, a notice that in accordance
114 with this section the health care facility is not liable for any civil damages for acts or omissions
115 except for those acts or omissions that are grossly negligent or are willful and wanton.

116 (5) Immunity from liability under this section does not extend to the use of general
117 anesthesia or care that requires an overnight stay in a general acute or specialty hospital licensed
118 under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

119 Section 3. Section **58-76-101** is enacted to read:

120 **CHAPTER 76. DIRECT-ENTRY MIDWIFE LICENSING ACT**

Part 1. General Provisions

58-76-101. Title.

This chapter is known as the "Direct-entry Midwife Licensing Act."

Section 4. Section **58-76-102** is enacted to read:

58-76-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct in accordance with a fine schedule established by rule and as a result of an adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(2) "Appropriate health care provider" means any health care professional licensed in this state with training and expertise pertinent to the condition which prompts the consultation, collaboration, referral, or transfer.

(3) "Board" means the Direct-entry Midwife Licensing Board created in Section 58-76-201.

(4) "Client" means a woman under the care of the direct-entry midwife, and her fetus or newborn.

(5) "Collaboration" means the process by which a direct-entry midwife and an appropriate health care provider jointly manage the care of a client whose health care needs have become medically complicated. The scope of collaboration may encompass the physical care of the client, including delivery, by the direct-entry midwife, according to a mutually agreed-upon plan of care. If an appropriate health care provider must assume a dominant role in the care of the client due to increased risk status, the direct-entry midwife may continue to participate in physical care, counseling, guidance, teaching, and support.

(6) "Consultation" means the process by which a direct-entry midwife, who maintains primary management responsibility for a client's care, seeks the advice of an appropriate health care provider.

(7) "Direct-entry midwife" means a person licensed under this chapter to engage in practice as a direct-entry midwife.

(8) "Direct-entry midwife formulary" means the direct-entry midwife formulary adopted by rule by the division in collaboration with the board and the Direct-entry Midwife Formulary

152 Committee under Section 58-76-202.

153 (9) "Direct supervision" means that a direct-entry midwife licensed under this chapter is
154 responsible for the activities and services performed by the supervisee and is normally present in
155 the facility when those activities and services are performed, but when not present in the facility
156 is available by voice communication to direct and control the activities and services performed by
157 the supervisee.

158 (10) "Midwifery model of care" means the model of care based on the fact that pregnancy
159 and birth are normal life processes and is distinct from the medical model of care and the practice
160 of medicine. The midwifery model of care includes:

161 (a) monitoring the physical, psychological, and social well-being of the mother throughout
162 the childbearing cycle;

163 (b) providing the mother with, in the location of her choice, individualized education,
164 counseling, and prenatal care, hands-on assistance during labor and delivery, and postpartum
165 support;

166 (c) minimizing technological interventions; and

167 (d) identifying and referring women who require obstetrical attention.

168 (11) "Midwifery services" means those services provided to an expectant, laboring,
169 postpartum or interconceptual woman, or a newborn infant, according to the midwifery model of
170 care and include:

171 (a) supervision and assistance of natural childbirth;

172 (b) provision of prenatal care, postpartum care, and limited interconceptual care;

173 (c) identification and reduction of risks to the mother;

174 (d) appropriate measures that promote, maintain, and restore the health of mother and
175 baby;

176 (e) the detection of abnormal conditions;

177 (f) the procurement of appropriate medical assistance;

178 (g) the execution of emergency measures including resuscitation of the newborn according
179 to Newborn Resuscitation Provider guidelines; and

180 (h) the provision of normal newborn care and appropriate screening.

181 (12) "Midwives Alliance of North America" or "MANA" means the national organization
182 in the United States representing the profession of direct-entry midwifery and direct-entry

183 midwives.

184 (13) (a) "Natural childbirth" means an essentially uncomplicated delivery, and includes
185 the use of:

186 (i) natural medicines; and

187 (ii) uncomplicated episiotomy.

188 (b) "Natural childbirth" does not include the use of:

189 (i) forceps delivery;

190 (ii) general or spinal anesthesia;

191 (iii) caesarean section delivery; or

192 (iv) induced abortion.

193 (14) "Natural medicine" means:

194 (a) food, food extracts, dietary supplements as defined by the federal Food, Drug, and
195 Cosmetics Act, homeopathic remedies, and plant substances that are not designated as prescription
196 drugs or controlled substances;

197 (b) over-the-counter medications;

198 (c) other nonprescription substances, the prescription or administration of which is not
199 otherwise prohibited or restricted under federal or state law; and

200 (d) for direct-entry midwives licensed under this chapter only, prescription drugs:

201 (i) that are not controlled substances as defined in Section 58-37-2;

202 (ii) the prescription of which is consistent with the competent practice of direct-entry
203 midwifery; and

204 (iii) the prescription of which is approved by the division in collaboration with the
205 Direct-entry Midwife Formulary Committee.

206 (15) "Practice as a direct-entry midwife" means practice within the midwifery model of
207 care, MANA standards and qualifications for the art and practice of midwifery, and other generally
208 recognized scope and standards of direct-entry midwifery, and consistent with professionally
209 recognized preparations and educational standards, which practice includes the authority to:

210 (a) elicit and record a client's complete health information, including physical examination,
211 history, and laboratory findings commonly used in providing midwifery, interconceptual, and
212 normal newborn services to a client;

213 (b) assess findings and upon abnormal findings from the history, physical examination,

214 or laboratory findings, manage the care of the client, consult or collaborate with, or appropriately
215 refer or transfer the client to, an appropriate health care provider;

216 (c) identify client condition, plan, and implement appropriate client care, including:

217 (i) ordering appropriate laboratory and diagnostic tests, including basic prenatal panel
218 blood tests, urinalysis, gynecological cultures, and ultrasound examinations; and

219 (ii) obtaining, prescribing, and administering the prescription drugs and devices included
220 in the direct-entry midwife formulary in accordance with the standards and limitations included
221 in the formulary;

222 (d) evaluate the results of client care;

223 (e) consult, collaborate, refer, and transfer as is appropriate regarding client care and the
224 results of client care;

225 (f) manage the intrapartum period, including:

226 (i) performance of emergency episiotomy and repair of episiotomies and natural
227 lacerations, including administration of local anesthesia in accordance with the direct-entry
228 midwife formulary;

229 (ii) treatment of hemorrhage, including the administration of anti-hemorrhagic agents in
230 accordance with the direct-entry midwife formulary;

231 (iii) treatment of shock, including the administration of intravenous fluids in accordance
232 with the direct-entry midwife formulary; and

233 (iv) resuscitation of the newborn according to Newborn Resuscitation Provider guidelines,
234 including the use of oxygen;

235 (g) manage the postpartum period;

236 (h) provide limited interconceptual services as defined by rule, including the performance
237 of pap tests;

238 (i) provide normal newborn care to the age of six weeks, including obtaining, prescribing,
239 and administering agents required by law for newborn eye prophylaxis and injectable and oral
240 vitamin K in accordance with the direct-entry midwife formulary;

241 (j) represent or hold oneself out as a direct-entry midwife, or use the title direct-entry
242 midwife, or the initials DEM;

243 (k) execute the orders of an appropriate health care provider when those orders are
244 consistent with the education, training, experience, and current competency of the direct-entry

245 midwife, or as determined necessary by an appropriate health care provider in an emergency; and

246 (l) delegate direct-entry midwife duties to appropriate unlicensed assistive personnel under
247 the direct supervision of the direct-entry midwife.

248 (16) "Prescription drug or device" means:

249 (a) a drug or device which, under federal law, is required to be labeled with either of the
250 following statements or their equivalent:

251 (i) "CAUTION: Federal law prohibits dispensing without prescription:"; or

252 (ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed
253 veterinarian"; or

254 (b) a drug or device that is required by any applicable federal or state law or rule to be
255 dispensed on prescription only or is restricted to use by practitioners only.

256 (17) "Referral" means the process by which a direct-entry midwife directs a client to an
257 appropriate health care provider for the management of a particular problem or aspect of the
258 client's care, after informing the client of the risks to the health of the client and her newborn or
259 fetus.

260 (18) "Transfer" means the process by which a direct-entry midwife relinquishes care of a
261 client for pregnancy, labor, delivery, or postpartum care to an appropriate health care provider,
262 after informing the client of the risks to the health or life of the client and her newborn or fetus.

263 (19) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-76-501.

264 (20) "Unlicensed assistive personnel" means any person who is not licensed under this
265 chapter, regardless of title, to whom tasks are delegated by a licensed midwife in accordance with
266 the standards of the profession.

267 (21) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-76-502 and as
268 may be further defined by rule.

269 Section 5. Section **58-76-103** is enacted to read:

270 **58-76-103. Education and enforcement fund.**

271 (1) There is created within the General Fund a restricted account known as the
272 "Direct-entry Midwife Education and Enforcement Fund."

273 (2) The account shall be nonlapsing and consist of:

274 (a) administrative penalties imposed under Section 58-76-402; and

275 (b) interest earned on monies in the account.

276 (3) Monies in the account may be appropriated by the Legislature for the following
277 purposes:

278 (a) education and training of licensees under this chapter;

279 (b) enforcement of this chapter by:

280 (i) investigating unprofessional or unlawful conduct;

281 (ii) providing legal representation to the division when legal action is taken against a
282 person engaging in unprofessional or unlawful conduct; and

283 (iii) monitoring compliance of renewal requirements; and

284 (c) education and training of board members.

285 Section 6. Section **58-76-201** is enacted to read:

286 **Part 2. Board**

287 **58-76-201. Board.**

288 (1) There is created the Direct-entry Midwife Licensing Board consisting of four
289 direct-entry midwives and one member representing the general public.

290 (2) The board shall be appointed and serve in accordance with Section 58-1-201.

291 (3) The duties and responsibilities of the board are in accordance with Sections 58-1-202
292 and 58-1-203, and the board shall also:

293 (a) designate one of its members on a permanent or rotating basis to assist the division in
294 reviewing complaints concerning the unlawful or unprofessional conduct of a direct-entry midwife;
295 and

296 (b) advise the division in its investigation of these complaints.

297 (4) A board member who has, under Subsection (3), reviewed a complaint or advised in
298 its investigation may be disqualified from participating with the board when the board serves as
299 a presiding officer in an adjudicative proceeding concerning the complaint.

300 Section 7. Section **58-76-202** is enacted to read:

301 **58-76-202. Direct-entry Midwife Formulary Committee -- Adoption of direct-entry**
302 **midwife formulary.**

303 (1) The division shall establish a Direct-entry Midwife Formulary Committee under
304 Subsection 58-1-203(6) to make recommendations to the board and the division regarding the
305 direct-entry midwife formulary, including recommendations on which prescription drugs and
306 devices are appropriate for the scope of practice of direct-entry midwives and guidelines for their

307 use.

308 (2) The committee shall consist of five members as follows:

309 (a) one direct-entry midwife who is a member of the board;

310 (b) one direct-entry midwife who is not a member of the board;

311 (c) one licensed physician who has current professional experience consulting for and
312 collaborating with direct-entry midwives;

313 (d) one additional licensed physician; and

314 (e) one licensed pharmacologist.

315 (3) The committee members shall:

316 (a) be appointed by the director of the division;

317 (b) be appointed and serve in accordance with Section 58-1-201, except as those
318 provisions are modified by this section; and

319 (c) serve without compensation, travel costs, or per diem for their services.

320 (4) The committee shall operate in accordance with procedural rules established by the
321 division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

322 (5) The division shall adopt by rule, in accordance with Title 63, Chapter 46a, Utah
323 Administrative Rulemaking Act, a direct-entry midwife formulary which includes:

324 (a) those prescription drugs or devices which may be prescribed and administered by
325 direct-entry midwives; and

326 (b) standards, conditions, and guidelines for use of the prescription drugs or devices
327 included in the formulary.

328 Section 8. Section **58-76-301** is enacted to read:

329 **Part 3. Licensing**

330 **58-76-301. License required -- License classification.**

331 (1) Except as provided in Sections 58-1-307 and 58-76-305, a license is required to engage
332 in practice as a direct-entry midwife.

333 (2) The division shall issue to individuals qualified under the provisions of this chapter
334 a license in the classification direct-entry midwife.

335 Section 9. Section **58-76-302** is enacted to read:

336 **58-76-302. Qualifications for licensure.**

337 An applicant for licensure as a direct-entry midwife shall:

- 338 (1) submit an application in a form as prescribed by the division;
- 339 (2) pay a fee as determined by the department under Section 63-38-3.2;
- 340 (3) be of good moral character;
- 341 (4) hold a certified professional midwife certificate in good standing with the North
- 342 American Registry of Midwives or equivalent certification approved by the division;
- 343 (5) hold current adult and infant CPR & Level I newborn resuscitation certifications
- 344 through an organization approved by the division; and
- 345 (6) show satisfactory documentation of completion of a pharmacology course meeting the
- 346 requirements established by rule by the division in collaboration with the board.

Section 10. Section **58-76-303** is enacted to read:

58-76-303. Term of license -- Expiration -- Renewal.

349 (1) (a) Each license issued under this chapter shall be issued in accordance with a two-year
350 renewal cycle established by rule.

351 (b) A renewal period may be extended or shortened by as much as one year to maintain
352 established renewal cycles or to change an established renewal cycle.

353 (2) At the time of renewal, the licensee shall:

354 (a) demonstrate current compliance with the requirements of Subsections 58-76-302(4)
355 and (5); and

356 (b) have met any continuing education requirements established under Section 58-76-304.

Section 11. Section **58-76-304** is enacted to read:

58-76-304. Continuing education.

359 The division, in collaboration with the board, may establish by rule continuing education
360 requirements for renewal of licensure under this chapter, upon a finding by the division that
361 continuing education requirements are necessary to protect the public health, safety, and welfare.

Section 12. Section **58-76-305** is enacted to read:

58-76-305. Exemptions from licensure -- Rights of parents.

364 (1) In addition to the exemptions from licensure in Section 58-1-307, the following
365 persons may engage in practice as a direct-entry midwife without being licensed under this chapter,
366 but may not prescribe or administer prescription drugs unless otherwise authorized to do so:

367 (a) persons licensed under the laws of this state to engage in the practice of medicine,
368 surgery, osteopathy, or nurse midwifery when engaged in the practice of the profession for which

369 they are licensed;

370 (b) students training under a direct-entry midwife licensed under this chapter when acting
371 under the direct supervision of the licensee;

372 (c) traditional midwives who do not claim to be licensed, but whom women may choose
373 to attend them as guaranteed in Subsection (2), including the use of oxygen to resuscitate a
374 newborn according to neonatal resuscitation guidelines by traditional midwives who are certified
375 in neonatal resuscitation;

376 (d) an individual administering a domestic or family remedy, or attending the childbirth
377 of a family member;

378 (e) a person engaged in good faith in the practice of the religious tenets of any church or
379 religious or philosophical belief; and

380 (f) an individual rendering aid in an emergency, when no fee or other consideration of
381 value for the service is charged, received, expected, or contemplated.

382 (2) Nothing in this chapter abridges, limits, or changes in any way the right of parents to
383 deliver their baby where, when, how, and with whom they choose, regardless of licensure under
384 this chapter.

385 Section 13. Section **58-76-401** is enacted to read:

386 **Part 4. License Denial and Discipline**

387 **58-76-401. Grounds for denial of license -- Disciplinary proceedings.**

388 Division grounds for refusal to issue a license to an applicant, for refusal to renew the
389 license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee,
390 to issue a public or private reprimand to a licensee, and to issue cease and desist orders are in
391 accordance with Section 58-1-401.

392 Section 14. Section **58-76-402** is enacted to read:

393 **58-76-402. Authority to assess penalty.**

394 (1) After a proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act,
395 and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the division may
396 impose an administrative penalty of up to \$1,000 for unprofessional or unlawful conduct under this
397 chapter in accordance with a fine schedule established by rule.

398 (2) The assessment of a penalty under this section does not affect any other action the
399 division is authorized to take regarding a license issued under this chapter.

400 Section 15. Section **58-76-501** is enacted to read:

401 **Part 5. Unlawful and Unprofessional Conduct**

402 **58-76-501. Unlawful conduct.**

403 In addition to the definition in Subsection 58-1-501(1), "unlawful conduct" includes
404 representing or holding oneself out as a licensed direct-entry midwife, or identifying oneself by
405 the initials LDEM when not licensed under this chapter.

406 Section 16. Section **58-76-502** is enacted to read:

407 **58-76-502. Unprofessional conduct.**

408 In addition to the definition in Subsection 58-1-501(2), "unprofessional conduct" includes:

409 (1) engaging in any act or practice for which the licensee is not competent;

410 (2) disregard for a client's dignity or right to privacy as to her person, condition,
411 possessions, or medical record;

412 (3) failure to file or record any medical report as required by law, impeding or obstructing
413 the filing or recording of such a report, or inducing another to fail to file or record such a report;

414 (4) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality
415 with respect to a person who is a client, unless ordered by the court;

416 (5) failure to pay a penalty imposed by the division;

417 (6) allowing the certification required by Subsection 58-76-302(4) to lapse, expire, be
418 suspended, or be revoked;

419 (7) failing to report a violation of Subsection (6) to the division within 15 days of its
420 occurrence; and

421 (8) unlawfully or inappropriately delegating direct-entry midwifery duties.

422 Section 17. Section **58-76-503** is enacted to read:

423 **58-76-503. Penalty for unlawful and unprofessional conduct.**

424 (1) Any individual who violates the unlawful conduct provisions of Section 58-76-501 is
425 guilty of a class A misdemeanor.

426 (2) The division may assess administrative penalties in accordance with the provisions of
427 Section 58-76-402 for acts of unprofessional or unlawful conduct, or any other appropriate
428 administrative action in accordance with the provisions of Section 58-76-401.

429 (3) If a licensee has been convicted of violating Section 58-76-501 prior to an
430 administrative finding of a violation of the same section, the licensee may not be assessed an

431 administrative penalty under this chapter for the same offense for which the conviction was
432 obtained.

433 Section 18. Section **58-76-601** is enacted to read:

434 **Part 6. Relationship with Other Health Care Providers**

435 **58-76-601. Consultation, collaboration, referral, and transfer.**

436 (1) A direct-entry midwife shall appropriately consult with, collaborate with, refer to, or
437 recommend that a client transfer care to an appropriate health care professional when the
438 circumstances require such an action in accordance with standards for consultation, collaboration,
439 referral, and transfer established by rule by the division, in collaboration with the board, in
440 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

441 (2) If after a client has been informed that she has or may have a high-risk condition,
442 indicating the need for medical consultation, collaboration, or referral, and the client chooses to
443 decline, then the direct-entry midwife shall:

444 (a) continue to provide care for the client if the client signs a waiver of medical
445 consultation, collaboration, or referral; or

446 (b) terminate care in accordance with the procedures established by rule by the division
447 in collaboration with the board.

448 (3) If after a client has been informed that she has or may have a high-risk condition
449 requiring transfer, the client chooses to decline transfer, then the midwife shall terminate care or
450 enter into a collaboration agreement with an appropriate health care provider in accordance with
451 the procedures established by rule by the division in collaboration with the board.

452 (4) If transfer of care results from an emergency situation, the direct-entry midwife shall
453 initiate transfer by:

454 (a) calling 911 and reporting the need for immediate transfer;

455 (b) immediately transporting the client by private vehicle to the receiving provider; or

456 (c) contacting the health care provider to whom the client will be transferred and following
457 the health care provider's instructions.

458 Section 19. Section **58-76-602** is enacted to read:

459 **58-76-602. Immunity and liability.**

460 (1) If a direct-entry midwife seeks to consult with, refer, or transfer a client to another
461 licensed health care provider or facility, the responsibility of the provider or facility for the client

462 does not begin until the client is physically within the care of the provider or facility.

463 (2) An appropriate health care provider may, upon receiving a briefing of appropriate data
464 from the direct-entry midwife, issue a medical order for the midwife's client, without that client
465 being an explicit patient of the other provider. The responsibility and liability for the briefing and
466 the proper carrying out of the order is the midwife's. The licensed health care provider giving the
467 order is responsible and liable only for the appropriateness of the order given the data received.
468 The issuing of an order for a midwife's client does not constitute a "delegation of duties" from the
469 other provider to the midwife.

470 Section 20. Section **58-76-603** is enacted to read:

471 **58-76-603. Birthing centers.**

472 Direct-entry midwives licensed under this chapter are authorized to autonomously deliver
473 babies in birthing centers as defined in Section 26-21-2.

474 Section 21. Section **78-14-3** is amended to read:

475 **78-14-3. Definitions.**

476 As used in this chapter:

477 (1) "Audiologist" means a person licensed to practice audiology under Title 58, Chapter
478 41, Speech-language Pathology and Audiology Licensing Act.

479 (2) "Certified social worker" means a person licensed to practice as a certified social
480 worker under Section 58-60-305.

481 (3) "Chiropractic physician" means a person licensed to practice chiropractic under Title
482 58, Chapter 73, Chiropractic Physician Practice Act.

483 (4) "Clinical social worker" means a person licensed to practice as a clinical social worker
484 under Section 58-60-305.

485 (5) "Commissioner" means the commissioner of insurance as provided in Section
486 31A-2-102.

487 (6) "Dental hygienist" means a person licensed to practice dental hygiene as defined in
488 Section 58-69-102.

489 (7) "Dentist" means a person licensed to practice dentistry as defined in Section 58-69-102.

490 (8) "Direct-entry midwife" means a person licensed to practice as a direct-entry midwife
491 as defined in Section 58-76-102.

492 [~~8~~] (9) "Division" means the Division of Occupational and Professional Licensing

493 created in Section 58-1-103.

494 ~~[(9)]~~ (10) "Future damages" includes damages for future medical treatment, care or
495 custody, loss of future earnings, loss of bodily function, or future pain and suffering of the
496 judgment creditor.

497 ~~[(10)]~~ (11) "Health care" means any act or treatment performed or furnished, or which
498 should have been performed or furnished, by any health care provider for, to, or on behalf of a
499 patient during the patient's medical care, treatment, or confinement.

500 ~~[(11)]~~ (12) "Health care provider" includes any person, partnership, association,
501 corporation, or other facility or institution who causes to be rendered or who renders health care
502 or professional services as a hospital, physician, registered nurse, licensed practical nurse,
503 nurse-midwife, direct-entry midwife, dentist, dental hygienist, optometrist, clinical laboratory
504 technologist, pharmacist, physical therapist, podiatric physician, psychologist, chiropractic
505 physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon,
506 audiologist, speech-language pathologist, clinical social worker, certified social worker, social
507 service worker, marriage and family counselor, practitioner of obstetrics, or others rendering
508 similar care and services relating to or arising out of the health needs of persons or groups of
509 persons and officers, employees, or agents of any of the above acting in the course and scope of
510 their employment.

511 ~~[(12)]~~ (13) "Hospital" means a public or private institution licensed under Title 26, Chapter
512 21, Health Care Facility Licensing and Inspection Act.

513 ~~[(13)]~~ (14) "Licensed practical nurse" means a person licensed to practice as a licensed
514 practical nurse as provided in Section 58-31b-301.

515 ~~[(14)]~~ (15) "Malpractice action against a health care provider" means any action against
516 a health care provider, whether in contract, tort, breach of warranty, wrongful death, or otherwise,
517 based upon alleged personal injuries relating to or arising out of health care rendered or which
518 should have been rendered by the health care provider.

519 ~~[(15)]~~ (16) "Marriage and family therapist" means a person licensed to practice as a
520 marriage therapist or family therapist under Section 58-60-405.

521 ~~[(16)]~~ (17) "Naturopathic physician" means a person licensed to practice naturopathy as
522 defined in Section 58-71-102.

523 ~~[(17)]~~ (18) "Nurse-midwife" means a person licensed to engage in practice as a nurse

524 midwife under Section 58-44a-301.

525 ~~[(18)]~~ (19) "Optometrist" means a person licensed to practice optometry under Title 58,
526 Chapter 16a, Utah Optometry Practice Act.

527 ~~[(19)]~~ (20) "Osteopathic physician" means a person licensed to practice osteopathy under
528 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

529 ~~[(20)]~~ (21) "Patient" means a person who is under the care of a health care provider, under
530 a contract, express or implied.

531 ~~[(21)]~~ (22) "Pharmacist" means a person licensed to practice pharmacy as provided in
532 Section 58-17a-301.

533 ~~[(22)]~~ (23) "Physical therapist" means a person licensed to practice physical therapy under
534 Title 58, Chapter 24a, Physical Therapist Practice Act.

535 ~~[(23)]~~ (24) "Physician" means a person licensed to practice medicine and surgery under
536 Title 58, Chapter 67, Utah Medical Practice Act.

537 ~~[(24)]~~ (25) "Podiatric physician" means a person licensed to practice podiatry under Title
538 58, Chapter 5a, Podiatric Physician Licensing Act.

539 ~~[(25)]~~ (26) "Practitioner of obstetrics" means a person licensed to practice as a physician
540 in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58, Chapter 68,
541 Utah Osteopathic Medical Practice Act.

542 ~~[(26)]~~ (27) "Psychologist" means a person licensed under Title 58, Chapter 61,
543 Psychologist Licensing Act, to practice psychology as defined in Section 58-61-102.

544 ~~[(27)]~~ (28) "Registered nurse" means a person licensed to practice professional nursing as
545 provided in Section 58-31b-301.

546 ~~[(28)]~~ (29) "Representative" means the spouse, parent, guardian, trustee, attorney-in-fact,
547 or other legal agent of the patient.

548 ~~[(29)]~~ (30) "Social service worker" means a person licensed to practice as a social service
549 worker under Section 58-60-305.

550 ~~[(30)]~~ (31) "Speech-language pathologist" means a person licensed to practice
551 speech-language pathology under Title 58, Chapter 41, Speech-language Pathology and Audiology
552 Licensing Act.

553 ~~[(31)]~~ (32) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or
554 omission proximately causing injury or damage to another.

Legislative Review Note
as of 12-28-01 11:00 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel