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This responds to your email on January 15, 2024, to the Attorney General, who asked me to respond on her behalf. Your email included an attached letter asking several questions regarding midwives and Chapter 457J, Hawaii Revised Statutes (HRS). We respond to those questions as follows, according to the questions posed in your letter.

1. Are Birth Attendants legally allowed to continue practicing past July 1, 2023?

No, birth attendants are not legally allowed to continue practicing past July 1, 2023. The laws governing midwifery start with the premise that no person shall engage in the practice of midwifery, except as provided in HRS Chapter 457J. See HRS § 457J-5. In other words, all practitioners of midwifery are regulated by HRS Chapter 457J.

HRS § 457J-6 then describes exemptions, one of which is for persons acting as birth attendants on or before July 1, 2023. Birth attendants are not midwives. Rather, they are a separate category of practitioners who were exempted by the legislature when HRS Chapter 457J was enacted in 2019. The legislature specifically stated that the enactment of Act 32:

also exempts a separate category of birth attendants for a three-year period, to allow this community to define themselves and develop common standards, accountability, measures, and disclosure requirements. By the end of the three-year period, the legislature intends to enact statutes that will incorporate all birth practitioners and allow them to practice to the fullest extent under the law. The legislature also notes that practicing midwifery according to this Act does not impede one's ability to incorporate or provide cultural practices.

Act 32, 2019 Haw. Sess. Laws 83. Emphases added. The fact that Act 32 specifically references a three-year period indicates a finite period of time that closes at the end of the three years, July 1, 2023.¹

Reading HRS §§ 457J-5 and 457J-6 a)(5) together, it is clear from the plain language that the latter provides an exemption for persons acting as a birth attendant only until July 1, 2023, subject to certain conditions.² After July 1, 2023, birth attendants are no longer exempted from the requirements of having a midwife license. The obligation to obtain a midwife license is based on HRS § 457J-5, which is still in effect.

In addition to the explicit language of Act 32's provisions and Session Laws, the legislative history of Act 32 supports the interpretation of having all birth practitioners becoming licensed by a definite date in the near future.³ The Committee on Commerce, Consumer Protection, and Health stated that "all persons engaged in the practice of midwifery as required by this measure shall be licensed by January 1, 2024." S. Journal, Stand. Comm. Rep. No. 659 (Haw. 2019). The Committee on Health reported that a Proposed Draft it received after public testimony added "provisions allowing for the continued practice of birth attendants who are not midwives through July 1, 2023." H. Journal, Stand. Comm. Rep. No. 1700 (Haw. 2019). Emphasis added. Lastly, the Committee on Finance stated that this measure "[e]xempts a separate category of birth attendants until July 1, 2023, to allow time to define and develop common standards, accountability measures, and disclosure requirements for birth attendants." H. Journal, Stand. Comm. Rep. No. 2213 (Haw. 2019). Emphasis added.

Clearly, the use of the terms "through" and "until" reflects a specific window of time, the closure of which ends on July 1, 2023. The three-year time period had the specific purpose of defining and developing common standards, accountability measures, and disclosure requirements for birth attendants. We are unaware of any wording in the statute or intent expressed in the legislative history to include a silent or implicit grandfather clause in HRS § 457J-6.

Given the express language of HRS Chapter 457J and the Session Laws and legislative history of Act 32, we conclude that the exemption for birth attendants as provided in HRS § 457J-6(a)(5) ended on July 1, 2023.

¹ Section 12 of Act 32, Haw. Sess. Laws 91, states that the Act "shall take effect upon its approval; provided that sections 6 and 7 shall take effect on July 1, 2019." Thus, the three-year period referenced in HRS § 457J-6 ends on July 1, 2023.

² A basic tenet of statutory interpretation is that where the language of the law in question is plain and unambiguous, the duty of the court is only to give effect to the law according to its plain and obvious meaning. *In re Estate of Spencer*, 60 Haw. 497, 499 (1979).

³ Where the language of a statute is ambiguous or of doubtful meaning, the court may consider extrinsic aids to construction. *State v. Ogata*, 58 Haw. 514, 518 (1977). See also HRS § 1-15 (Construction of ambiguous context).

2. Are birth attendants and other birth working professionals (i.e. doulas, lactation consultants, counselors, cultural or religious practitioners, extended hanai, etc.) legally allowed to practice if their scope is not identical to the definition of midwifery but contains any combination of the activities in the definition?

HRS § 457J-2 defines midwifery to mean the provision of one or more of the following services:

- (1) Assessment, monitoring, and care during pregnancy, labor, childbirth, postpartum and interconception periods, and for newborns, including ordering and interpreting screenings and diagnostic tests, and carrying out appropriate emergency measures when necessary;
- (2) Supervising the conduct of labor and childbirth; and
- (3) Provision of advice and information regarding the progress of childbirth and care for newborns and infants.

Emphasis added. In other words, the provision of any one service, or one service in combination with another service included in the definition of midwifery, constitutes the practice of midwifery for which a license is required. The provision of services does not need to be exactly identical to or encompass all of the activities listed in the definition of midwifery to be considered the practice of midwifery. Unless exempted by HRS § 457J-6, the provision of any activity in the definition of midwifery requires a license.

2.a. The definition does not include details about payment. Would a hanai family member be considered to be practicing midwifery without a license if they “provided advice and information regarding the progress of childbirth and care for newborns and infants”?

HRS § 457J-6(c) states that “[n]othing in this chapter shall prohibit a person from administering care to a person’s spouse, domestic partner, parent, sibling, or child.” Because hanai family members are not included in this statute, hanai family members providing any of the activities described in the definition of midwifery would be considered practicing midwifery without a license regardless of whether money is exchanged.

2.b. HRS 457J exempts persons assisting their spouse, domestic partner, parent, sibling, or child but not grandparents, aunts, uncles, cousins, or broader hanai family.

Correct. As explained in 3. above, HRS § 457J-6(c) specified only a limited group of individuals. Extended family members were not recognized as those permitted to assist in care.

2.c. HRS 457J exempts professionals who are “licensed and performing work within the scope of practice or duties of the person's profession that overlaps with the practice of midwifery” but does not exempt professionals like doulas, lactation consultants, or religious or cultural practitioners that do not currently have a licensing regime.

Partially correct. HRS § 457J-6 describes exemptions to the general license requirement of HRS § 457J-5. HRS § 457J-6(a)(1) exempts certified nurse-midwives licensed under Chapter 457. HRS § 457J-6(a)(2) exempts those “licensed and performing work within their profession” that overlaps with the practice of midwifery. Emphasis added. HRS § 457J-6(a)(3) exempts student midwives subject to certain conditions. And HRS § 457J-6(a)(4) exempts “a person rendering aid in an emergency where no fee for the service is contemplated, charged, or received.” Because they are unlicensed, birth professionals such as doulas or lactation consultants are not included in those exempted by HRS § 457J-6(a)(2) which specifies a licensed status.

Regarding religious and cultural practitioners, HRS § 457J-6(b) states that “[n]othing in this chapter shall prohibit healing practices by traditional Hawaiian healers engaged in traditional healing practices of prenatal, maternal, and child care as recognized by any council of kupuna convened by Papa Ola Lokahi. Nothing in this chapter shall limit, alter, or otherwise adversely impact the practice of traditional Native Hawaiian healing pursuant to the Constitution of the State of Hawaii.” This provision seems to allow traditional healing practices of prenatal, maternal, and child care so long as those practices are recognized by a council of kupuna convened by Papa Ola Lokahi.

While the provision also allows the practice of traditional Native Hawaiian healing pursuant to the Constitution of the State of Hawaii, the specific Native Hawaiian healing practice protected by the State Constitution is not identified. In addition, Act 32, which created HRS Chapter 457J, states that “[t]he legislature also notes that practicing midwifery according to this Act does not impede one’s ability to incorporate or provide cultural practices.” Act 32, 2019 Haw. Sess. Laws, 83. Emphasis added. But while a licensed midwife can certainly include cultural practices, it is not clear what, if any, cultural practices are exempted from midwifery licensure.

3. Does HRS § 436B-27(b) apply to birth attendants, doulas, lactation consultants, counselors, cultural or religious practitioners, extended hanai, etc.?

Yes. Except for the parameters described for cultural practitioners in HRS § 457J-6(b), any person who engages in any of the activities included in the definition of midwifery for which a licensed is required and fails to obtain such license, or advertises or represents that the person is licensed to engage in midwifery, is subject to HRS § 436B-27 and its penalties.

HRS § 436B-27(b) states that “[a]ny person, who engages in an activity requiring a license issued by the licensing authority and who fails to obtain the required license, or who uses any word, title, or representation to induce the false belief that the person is licensed to engage in the activity, other than a licensee who inadvertently fails to maintain licensing requirements under the appropriate licensing statute and who subsequently corrects the failure so that there was no lapse in licensure, shall be guilty of a misdemeanor and each day of unlicensed activity shall be deemed a separate offense.”

Lastly, your email included a Civil Beat article entitled “Midwifery Should Be Regulated For Safety Of Consumers And Community”. You asked if the author’s assertion is correct that “birth attendants **can** continue practicing past July 1, 2023 because birth attendant’s services are not considered midwifery.” Emphasis in original. As explained in 1. above, we opine that the author’s assertion is incorrect and that birth attendants are prohibited from practicing past July 1, 2023.

Please feel free to contact me if you have further questions or concerns. My contact information is shari.j.wong@hawaii.gov and (808) 586-1180.

Very truly yours,



Shari Wong
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APPROVED:



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