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8 **SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN MARICOPA COUNTY**

10 Arizona Association of Midwives, Case No.: CV 2015-053512
11 Plaintiff,

12 v.

13 Arizona Department of Health Services; Verified Complaint for Declaratory and
14 Mark Brnovich, Arizona Attorney General, in Injunctive Relief
15 his official capacity; Cara M. Christ, Director
16 of the Arizona Department of Health
17 Services, in her official capacity,

18 Defendants

19 **PRELIMINARY STATEMENT**

- 20 1. This case is brought by the Arizona Association of Midwives on their own behalf and on behalf of
21 the consumers who use their services.
- 22 2. In 2012, the Arizona Association of Midwives, together with consumers of midwifery services,
23 lobbied for a revision of the outdated midwifery licensing rules that had been in place for nearly
24 two decades. Consequently, Governor Brewer signed into law HB 2247. HB 2247 allowed the
25 Arizona Department of Health Services ("the Department") to engage in exempt rulemaking for
26 two purposes: to reduce the regulatory burden on Arizona midwives and to consider increasing
27 Arizona midwives scope of practice.

- 1 3. The new rules took effect in July of 2013. Since that time, the Department has promulgated new
2 rules and policies, and new interpretations of old rules that put mothers' and babies' lives at risk.
- 3 4. The Arizona Association of Midwives has met publicly and privately with the Department,
4 provided the Department with evidence-based practice guidelines, and formally requested that the
5 Department change those rules and policies at odds with patient safety or evidence-based practice.
6 The Department has refused.
- 7 5. Since the rules revision, the Department has engaged in campaign of harassment and intimidation
8 of the Licensed Midwives, targeting those midwives who have voiced concerns that the current
9 rules and policies endanger the health and safety of mothers and babies.
- 10 6. The Arizona Association of Midwives seeks declaratory and injunctive relief to enjoin the
11 Department from enforcing those rules not promulgated pursuant to HB2247's specific grant of
12 legislative power, from enforcing those policies not promulgated through the Administrative
13 Procedure Act, and from enforcing those rules and policies that violate Arizona and United States'
14 constitution.

15 VENUE AND JURISDICTION

- 16 7. This action arises under state law, and the United States and Arizona Constitution. This Court has
17 jurisdiction pursuant to A.R.S. § 12-123 and § 41-1034.
- 18 8. Venue is proper in Maricopa County under A.R.S. §§ 12-401 and 41-1034.
- 19 9. Declaratory relief is sought pursuant to A.R.S. § 12-1831 *et seq* and §§ 41-1030, 1034.
- 20 10. Injunctive relief is sought pursuant to A.R.S. § 12-1801.

21 22 FACTS COMMON TO ALL CLAIMS

- 23 11. The Arizona Association of Midwives is a non-profit professional association representing
24 midwives, apprentices, midwife assistants, birth workers, and members of the public. The Arizona
25 Association of Midwives has seventy-three members.
- 26 12. Midwives are small business owners and healthcare professionals. Midwives are trained to provide
27 care for low-risk pregnant persons and preventative care. While each midwife is free to develop
28 her own practice philosophy, all midwives practice the midwifery model of care. The midwifery

1 model of care is personalized, affordable, holistic healthcare that respects patient autonomy while
2 delivering evidence-based practices and excellent outcomes.

3 13. Defendant Arizona Department of Health Services is an agency of the State of Arizona. A.R.S. §
4 36-2. The Division of Special Licensing currently oversees the licensing and enforcement of the
5 Licensed Midwives of Arizona.

6 14. Defendant Cara Christ, M.D., is the Director of the Arizona Department of Health Services and is
7 sued in her official capacity. Defendant Christ has the power and duty to administer and enforce
8 licensure requirements for midwives. She is empowered by law to “[a]dopt standards with respect
9 to the practice of midwifery designed to safeguard the health and safety of the mother and child.”
10 A.R.S. § 36-755.

11 15. Defendant Mark Brnovich is the Attorney General of the State of Arizona and is sued in his
12 official capacity. Defendant Brnovich has the authority to enforce the midwifery rules. As “chief
13 legal officer of the state,” he is “the legal advisor of the departments of this state and render[s]
14 such legal services as the departments require.” A.R.S. § 41-192. The Attorney General is charged
15 with certain obligations in connection with enforcement of licensing provisions for all health care
16 providers (including midwives), including bringing actions to revoke a license or enjoin the
17 operation of a licensee, and actions to recover civil penalties for violation of licensing obligations,
18 A.R.S. § 36-756.

19 16. Since the 2013 rules revision the Department, by and through the Office of the Attorney General,
20 has attempted to suspend the licenses of several midwives and brought a record number of
21 midwives to enforcement for instances where the mother and infant outcomes were excellent, but
22 the midwife allegedly failed to follow a Department rule.

23 17. According to the Department of Health Services website, in 2013 the Department brought a single
24 enforcement action. In 2014, the Department brought fourteen enforcement actions. As of the
25 date of this filing, the Department has brought nineteen actions thus far in 2015. There are only
26 seventy-four Licensed Midwives in Arizona; approximately forty are actively practicing.

27 18. Nearly half of the actively practicing Licensed Midwives experienced an enforcement action in
28 the past twelve months.

1 19. In the past twelve months a record number of consumers used Licensed Midwives as maternity
2 care providers. Arizona Licensed Midwives delivered approximately 1200 babies in the last year,
3 with great outcomes for mothers and babies.

4 20. Despite these great outcomes, the Department has pursued enforcement actions and promulgated
5 new rules that reduce a midwives scope, increase her administrative burden, and threaten the
6 health and safety of midwifery clients.

7 HEALTH AND SAFETY

8 21. On August 6, 2015, Jessica Ray gave birth to a healthy baby. She was attended by a midwife and
9 birthed at home.

10 22. Later that day, her infant began grunting and turning blue. She called her midwife who told her to
11 take the baby to the emergency room. After being placed briefly on oxygen, the infant stabilized
12 and recovered.

13 23. Ms. Ray's midwife was instructed by the Department to terminate care for Ms. Ray. While it was
14 Ms. Ray's infant that needed emergency care, Ms. Ray was not allowed to receive postpartum
15 care from her midwife because the infant had a "prohibited practice" condition. *See* A.A.C.
16 R9-16-111(D)(1)(e).

17 24. Ms. Ray, newly postpartum and with an infant who was recently released from the hospital,
18 struggled to find postpartum care with another provider. She wanted to return to her midwife for
19 postpartum care, but was refused. She never received further postpartum care.

20 25. Before July 1, 2013, the rules read that a "licensed midwife shall not accept for care and shall not
21 during pregnancy, labor, or delivery, and postpartum knowingly continue to provide care to, and
22 shall immediately transfer care of, any woman who *has or develops* any of the following
23 conditions or circumstances." A.A.C. R9-16-108 (previous version)(emphasis added).

24 26. The new rule mirrors this revision stating that a "midwife shall not accept for midwifery services
25 or continue midwifery services for a client who *has or develops* any of the following [conditions
26 or circumstances.]" A.A.C. R 9-16-111 (new rules)(emphasis added).

27 27. Before July 1, 2013, the Department read this provision in the present tense; a midwife cannot
28 care for someone who has or develops a dangerous condition.

- 1 28. There is no provision in either the old or new rules that prohibit a midwife from caring for a
2 person who *has had* or *developed* a condition that has later resolved.
- 3 29. Since the rules revision, the Department has adopted a policy that once a patient has a “prohibited
4 practice” condition, that patient can never return to midwifery care.
- 5 30. Midwives have met with representatives from the Department, voiced concerns for patient safety,
6 and filed multiple Petitions for a Rule under A.R.S. § 41-1030 with the Department. The
7 Department has refused to change this policy.
- 8 31. This policy restricts a midwives scope of practice by not allowing otherwise eligible women to
9 return to midwifery care.
- 10 32. In one instance, a midwife had a client who experienced preterm labor (labor beginning before 36
11 weeks gestation), a “prohibited practice” condition for which the midwife is required to transfer
12 care. A.A.C. R9-16-111(18). The midwife subsequently transferred care of the client to a
13 physician. The client’s preterm labor subsided and, at 38 weeks gestation, the physician
14 transferred care back to the midwife. The Department told the midwife that she was prohibited
15 from caring for that client because the client had experienced preterm labor, despite that the client
16 had carried the child to term.
- 17 33. In another case, a midwife attended a birth where the mother experienced a postpartum
18 hemorrhage of more than 500 ml, a “prohibited practice” condition. A.A.C. R9-16-111(25). The
19 midwife called EMS. Before EMS arrived, the bleeding stopped and the client stabilized. As a
20 result, the client refused transport and EMS confirmed that the client did not require transport. The
21 Department has threatened to suspended the midwife’s license because she stayed with the client
22 while EMS was present and remained with her client after EMS had left, despite that the
23 “prohibited practice” condition resolved.
- 24 34. The Department prohibits a women returning to midwifery care even if the “prohibited practice”
25 did not occur under the midwife’s care. In one instance, a midwife transferred her patient to the
26 hospital for prolonged labor. While at the hospital, her fetus developed an abnormal heartbeat, a
27 “prohibited practice” condition. A.A.C. R9-16-111(B)(23). After an emergency cesarean the
28 hospital released the patient to the care of the midwife. The Department instructed the midwife

1 that she could not resume care of the client. The client struggled to find postpartum care with
2 another provider, and ultimately only had one postpartum followup.

3 35. Arizona healthcare providers routinely release “prohibited practice” clients to midwifery care
4 once the condition has been resolved. Healthcare providers are often unable to continue care or
5 provide postpartum care for midwifery clients, as midwifery clients are not established within
6 their practice. As such, these clients are routinely left without postpartum care because of this
7 Department policy.

8 36. The Department’s policy on “prohibited practice” negatively effects the health and safety of
9 mothers and babies.

10 37. At times, it places a woman who is low risk and wants a midwife attended birth outside of the
11 scope of practice. In other instances, it directly endangers midwifery clients by requiring the
12 permanent and unilateral termination of care, even if another provider has not assumed care.

13 14 REDUCTION IN SCOPE

15 38. The new rules reduce a licensed midwives scope by redefining “gestation,” restricting breech
16 deliveries, and terminating midwife delivered postpartum and preconception care.

17 Gestation

18 39. Before July 1, 2013, the midwifery rules did not include a definition of “gestation.”

19 40. As such, “gestation” assumed its ordinary clinical definition. The ordinary clinical definition
20 under the midwifery standard of care is to use all available information and technology to assess
21 gestational age, including last menstrual period, date of conception, date of ovulation, first
22 positive pregnancy test, fundal height, and ultrasound technology.

23 41. After the rules revision, “gestation” was defined for the first time to mean “the length of time
24 from conception to birth, as calculated from the first day of the last normal menstrual period.”

25 A.C.C. R9-16-101(20).

26 42. This definition is not the standard of care in either the midwifery or obstetrical communities. It
27 has not been the standard of care for at least one hundred years.

28 43. This definition limits a midwives scope because it places women who do not have regular periods,
women who conceived on certain types of birth control with periods, women who used artificial

1 reproductive technology, and breastfeeding women who do not menstruate outside a midwife's
2 scope of practice. These conditions are common; thirty percent of women of reproductive age
3 have irregular periods.

4 44. Because a midwife must terminate care at 42 weeks gestation as calculated by last menstrual
5 period only, this rule reduced a midwives scope and excluded otherwise eligible women from
6 care.

7 45. The Department has enforced this definition against the Licensed Midwives and has filed a Notice
8 of Intent to Suspend the license of a midwife who used ultrasound technology to help determine
9 gestational age.

10 Breech Birth

11 46. Before July 1, 2013, any licensed midwife in Arizona could attend a birth where the fetus was in
12 an "abnormal presentation," commonly called a breech birth, provided that the midwife consult
13 with a physician.

14 47. The new rules package reduces the midwives' scope of practice by both requiring a breech client's
15 cervix to dilate at predetermined rate and requiring the client to consent to cervical examinations.
16 A.A.C. R9-16-108(J)(4). Neither of these conditions are evidence-based and both reduce the
17 scope of licensed midwives.

18 48. According to midwife trainings conducted by the Department, breech clients cannot refuse hourly
19 cervical examinations. A midwife must terminate care if the client refuses a cervical examination.

20 49. Further, the new rules only allow those midwives who hold the Certified Professional Midwife
21 ("CPM") credential to deliver breech fetuses. A.A.C. R9-16-108(B).

22 50. Because the CPM credential is a newer credential first issued in 1994, many of the Arizona
23 Licensed Midwives who have been delivering breech babies for decades with excellent outcomes
24 are now prohibited from doing so.

25 Preconception Counseling, Cancer Screening, and Postpartum Care

26 51. The statutory definition of a midwife under A.R.S. § 36-751 is "a person who delivers a baby or
27 provides health care related to pregnancy, labor, delivery and postpartum care of the mother and
28 her infant."

- 1 52. Before July 1, 2013, this statute was interpreted such that any person could seek the care of a
2 midwife for preconception counseling, cancer screenings, or postpartum followup at any time
3 because that healthcare was "related to" pregnancy and postpartum care.
- 4 53. Part of the education of a Licensed Midwife includes the skills necessary to provide preconception
5 counseling, cancer screenings, and postpartum care.
- 6 54. Since July 1, 2013, the Department has interpreted this statute and a nearly identical new rule that
7 defines "midwifery services" to mean that a midwife may not begin services until the beginning of
8 pregnancy and must terminate services six weeks after a birth. A.A.C. R9-16-101(30).
- 9 55. Terminating services at six weeks without the ability to follow up with clinical concerns is not the
10 standard of care within either the midwifery or obstetrical communities.
- 11 56. Terminating services at six weeks endangers the lives of mothers and babies as the healthcare
12 professional most able to screen for postpartum depression or other complications is not allowed
13 to answer her client's clinical questions after six weeks postpartum.
- 14 57. In September of 2015, Amy Baumgartner delivered a healthy baby under the care of an Arizona
15 Licensed Midwife.
- 16 58. At seven weeks postpartum, Ms. Baumgartner began to experience sleeplessness and loss of
17 appetite. She called her midwife and asked for follow up care.
- 18 59. The midwife, hearing these symptoms, was worried that her client might be experiencing
19 postpartum depression or another complication. Nevertheless, the midwife was prohibited from
20 caring for Ms. Baumgartner because she had delivered her baby more than six weeks ago.
- 21 60. During the same time period that the Department was instructing midwives to terminate care at six
22 weeks postpartum without exception, the Department launched the Early Childhood Home
23 Visiting Services program. That program provides postpartum care for low income women for up
24 to one year. The care is delivered by a layperson.

25
26 **INCREASED ADMINISTRATIVE BURDEN**

- 27 61. Before July 1, 2013, the Licensed Midwives were required to file a quarterly report. The quarterly
28 report contained basic information about each mother who birthed during the timeframe. The

1 report was filed by the midwife who attended the birth. A.A.C. R9-16-107(G)(exhibit E) (previous
2 rules).

3 62. Since July 1, 2013, the Licensed Midwives must file a midwifery report for every client they see,
4 regardless of whether the midwife attended the birth. The rules created a "rolling deadline,"
5 mandating that a report be filed within 30 days of termination of midwifery services. A.A.C.
6 R9-16-114.

7 63. As a result, midwives who work in a group practice experienced an exponential increase in
8 reporting because they must now file a report for every client with whom they has a prenatal or
9 postpartum appointment, even if the midwife did not attend the birth.

10 64. The new "rolling deadline" increases a midwife's administrative burden because a midwife cannot
11 say with certainty when she will terminate services. For example, a midwife might see a patient at
12 two weeks postpartum, but the client might skip the six week visit and not respond to the midwife.
13 In that situation, even if the midwife files a report immediately, that report is late.

14 65. The new rules imposed an additional administrative burden by requiring that a midwife research
15 hospital policies and phone the nearest hospital in accordance with those policies when the client
16 begins labor and ends labor. A.A.C. R9-16-108(J)(2). While it is the standard of care to phone the
17 nearest hospital in the event of a transfer, calling for every client, every delivery, creates an
18 unnecessary burden for midwives.

19 20 ILLEGAL REQUESTS FOR CHARTS

21 66. Patient data is confidential and protected by law. In Arizona, the Department may request patient
22 data or the midwife's chart only pursuant to an investigation after "receiving information that a
23 person is violating this article [licensing of midwifery]. In connection with an investigation, the
24 department may examine and copy documents and other physical evidence wherever located that
25 relate to the conduct or competency of a midwife pursuant to the requirements of this article."
26 A.R.S. § 36-756.01.

27 67. Since July 1, 2013, the Department began requesting client charts for reasons other than
28 investigation. Specifically, the Department has adopted a policy of requesting unredacted charts
for every client who had a Vaginal Birth After Cesarean ("VBAC"), a breech birth, an infant who

1 is Large for Gestational Age ("LGA") or Small for Gestational Age ("SGA"), or transfer of care
2 for any reason.

3 68. That a client had a VBAC, a breech birth, an LGA or SGA baby, or transferred care is not
4 "information that a person is violating" the midwifery regulations.

5 69. Collectively, these conditions account for nearly twenty percent of the Licensed Midwife attended
6 births in Arizona over the past year.

7 70. As a result of this policy, the regulatory burden of the Licensed Midwives has increased
8 dramatically.

9 71. Further, a midwife's chart contains highly personal and confidential details. Midwifery consumers
10 remain concerned that this sensitive data is transmitted in unredacted form and for reasons other
11 than an investigation.

12 INFORMED CONSENT AND REFUSAL

13 72. Under both the new and old rules, Licensed Midwives were required to give their clients informed
14 consent. Part of the informed consent process is a statement of risks and benefits of the proposed
15 course of treatment and the ability to consent or refuse.

16 73. Before July 1, 2013, it was the Department's position that the clients of Licensed Midwives could
17 refuse any course of treatment without losing access to midwifery care.

18 74. After July 1, 2013, the Department issued policies in the form of midwife training sessions that
19 midwifery clients cannot refuse certain tests or procedures. Specifically, if a client refuses to have
20 a vaginal exam during labor, refuses to have a syphilis test, or refuses transport the midwife must
21 terminate care.

22 75. According to the Department, each midwifery client must submit to at least one mandatory
23 vaginal exam during labor or lose her access to midwifery care. By creating a situation where a
24 client must submit to a vaginal exam or lose access to her healthcare provider of choice, the
25 laboring woman is coerced into submitting to an exam that she may not want or need.

26 76. Mandatory vaginal exams are not the standard of care in the midwifery community. In instances
27 where a client's bag of waters has ruptured, a mandatory vaginal exam exposes the client to an
28 unnecessary risk of infection. Further, for clients who have experienced abuse, a mandatory
vaginal exam can trigger past emotional trauma.

1 77. According to the Department, each midwifery client must submit to a syphilis test or the midwife
2 must terminate care. While it is the standard of care in the midwifery and obstetrical communities
3 to offer a syphilis test to every pregnant client, it is not the standard to withhold prenatal care in
4 the event the client does not consent to testing.

5 78. According to the Department, each midwifery client must consent to a transport or transfer of care
6 in the event that one of the "prohibited practice" conditions occur. This means that a client who
7 has experienced a postpartum hemorrhage must consent to a transfer to EMS, even if that patient
8 is stable and both the midwife and EMS believe that transport is not necessary.

9 CLAIMS FOR RELIEF

10 **FIRST CLAIM FOR RELIEF**

11 **(The Department's Policy on Prohibited Practice Violates A.R.S. § 41-1034)**

12 79. Plaintiff restates and reincorporates by reference the allegations contained in paragraphs 1-78
13 above.

14 80. The Department has formulated a policy that once a client "has or develops" a prohibited practice
15 condition, that client can never return to midwifery services.

16 81. The policy is at odds with that historical practice of the Department.

17 82. The policy is at odds with patient safety, as there is often no provider assuming care of the client.

18 83. The policy is widely applicable to the Licensed Midwives and implements, interprets or prescribes
19 law or policy, or describes the procedure or practice requirements of an agency.

20 84. The policy is a rule.

21 85. The policy was not made and approved in substantial compliance with the Administrative
22 Procedures Act and is therefore invalid. A.R.S. § 41-1034.

23 86. Licensed midwives and their clients will suffer irreparable harm if the Department continues to
24 enforce this invalid rule.

25 **SECOND CLAIM FOR RELIEF**

26 **(A.A.C. R9-16-101(20) Violates A.R.S. § 41-1030)**

27 87. Plaintiff restates and reincorporates by reference the allegations contained in paragraphs 1-86
28 above.

1 88. Under A.R.S. § 41-1030(C) an agency shall not “[m]ake a rule under a specific grant of
2 rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing
3 the rule.”

4 89. The language of HB2247 gave the Department authority to consider adopting rules that “reduc[e]
5 the regulatory burden on midwives” and “revis[e] the midwifery scope of practice pursuant to [an
6 increase in scope of practice].”

7 90. The rules revision decreased a Licensed Midwife’s scope of practice by forcing her to use only
8 last menstrual period to calculate gestational age, thereby placing women who irregularly
9 menstruate outside of a licensed midwives scope of practice.

10 91. Licensed midwives and their clients will suffer irreparable harm if the Department continues to
11 enforce this invalid rule.

12 **THIRD CLAIM FOR RELIEF**

13 **(A.A.C. R9-16-108(B), (D)(2), (J)(4) Violate A.R.S. § 41-1030)**

14 92. Plaintiff restates and reincorporates by reference the allegations contained in paragraphs 1-91
15 above.

16 93. The rules revision decreased a Licensed Midwife’s scope of practice by allowing only midwives
17 holding the CPM certification to attend breech birth, A.A.C. R9-16-108(B), requiring that breech
18 clients submit to mandatory cervical exams under threat of termination of midwifery services,
19 A.A.C. R9-16-108(J)(4), requiring a breech client’s cervix to dilate at a specific hourly rate in
20 order to continue midwifery care, A.A.C. R9-16-108(J)(4), and requiring breech clients to birth
21 within twenty-five miles of a hospital. A.A.C. R9-16-108(D)(2).

22 94. Since the Department exceeded the statutory authority granted to it under HB2247, these rules are
23 invalid. A.R.S. § 41-1030(C).

24 95. Licensed midwives and their clients will suffer irreparable harm if the Department continues to
25 enforce this invalid rule.

26 **FOURTH CLAIM FOR RELIEF**

27 **(The Department’s Policy on Preconception Counseling, Cancer Screenings, and Postpartum**
28 **Services Violates A.R.S. § 41-1034)**

- 1 96. Plaintiff restates and reincorporates by reference the allegations contained in paragraphs 1-95
- 2 above.
- 3 97. The Department has formulated a policy that women cannot receive midwifery services unless
- 4 they are pregnant or within six weeks postpartum.
- 5 98. The policy is at odds with that historical practice of the Department.
- 6 99. The policy is at odds with patient safety, as it is irresponsible practice to not allow a client to
- 7 follow up with healthcare concerns after six weeks postpartum.
- 8 100. The policy is widely applicable to the Licensed Midwives and implements, interprets or
- 9 prescribes law or policy, or describes the procedure or practice requirements of an agency.
- 10 101. The policy is a rule.
- 11 102. The policy was not made and approved in substantial compliance with the Administrative
- 12 Procedures Act and is therefore invalid. A.R.S. § 41-1034.
- 13 103. Licensed midwives and their clients will suffer irreparable harm if the Department continues to
- 14 enforce this invalid rule.

FIFTH CLAIM FOR RELIEF

(A.A.C. R9-16-114, 108(J)(2) Violates A.R.S. § 41-1030)

- 15
- 16
- 17 104. Plaintiff restates and reincorporates by reference the allegations contained in paragraphs 1-103
- 18 above.
- 19 105. The rules revision increased a Licensed Midwife's administrative burden by requiring midwives
- 20 to file reports for clients when the midwife did not attend the birth, by creating a rolling deadline,
- 21 and by requiring that a midwife research hospital policies and call ahead.
- 22 106. Since the Department exceeded the statutory authority granted to it under HB2247, these rules are
- 23 invalid. A.R.S. § 41-1030(C).
- 24 107. Licensed midwives and their clients will suffer irreparable harm if the Department continues to
- 25 enforce this invalid rule.

SIXTH CLAIM FOR RELIEF

(The Department's Requests for Patient Charts Violate A.R.S. § 36-756.01)

- 26
- 27
- 28 108. Plaintiff restates and reincorporates by reference the allegations contained in paragraphs 1-107
- above.

1 109. The Department is allowed to request patient charts only pursuant to an investigation. A.R.S. §
2 36-756.01.

3 110. The Department's policy of requesting charts for purposes other than an investigation violates
4 A.R.S. § 36-756.01.

5 111. The Department's policy of requesting charts for purposes other than an investigation is arbitrary,
6 capricious, and an abuse of discretion.

7 **SEVENTH CLAIM FOR RELIEF**

8 **(A.A.C. R9-16-108(J)(3)(c), 108(I), 113 Violates Article 2, Section 8 of the Arizona Constitution)**

9 112. Plaintiff restates and reincorporates by reference the allegations contained in paragraphs 1-111
10 above.

11 113. The Department has issued policies in the form of midwife training sessions that midwifery
12 clients cannot refuse vaginal exams during labor, syphilis tests, or transport. If a client refuses, the
13 midwife must terminate care.

14 114. These policies are at odds with the historical practice of the Department.

15 115. These policies violate a patient's right to informed consent and refusal of medical treatment free
16 from coercion protected in the Arizona Constitution.

17 116. Licensed midwives and their clients will suffer irreparable harm if the Department continues to
18 enforce this invalid rule.

19 **EIGHTH CLAIM FOR RELIEF**

20 **(A.A.C. R9-16-108(J)(3)(c), 108(I), 113 Violates the Due Process Clauses of the United States**
21 **Constitution)**

22 117. Plaintiff restates and reincorporates by reference the allegations contained in paragraphs 1-116
23 above.

24 118. These policies violate a patient's right to informed consent and refusal of medical treatment free
25 from coercion protected in the United States Constitution.

26 119. Licensed midwives and their clients will suffer irreparable harm if the Department continues to
27 enforce this invalid rule.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- A. Enter a declaratory judgment that the Department's policy on "prohibited practice" violates Section 41-1034 of the Administrative Procedure act and is therefore void;
- B. Enter a declaratory judgment that A.A.C. R9-16-101(20) (gestation) exceeds the statutory grant of authority under HB2247 and is therefore void;
- C. Enter a declaratory judgment that A.A.C. R9-16-108(B), (D)(2), (J)(4) (breech birth) exceed the statutory grant of authority under HB2247 and are therefore void;
- D. Enter a declaratory judgment that the Department's policy on preconception counseling, cancer screening, and postpartum care violates Section 41-1034 of the Administrative Procedure act and is therefore void;
- E. Enter a declaratory judgment that A.A.C. R9-16-114, 108(J)(2) (administrative burden) exceed the statutory grant of authority under HB2247 and are therefore void;
- F. Enter a declaratory judgment that the Department's policy to request charts absent an investigation violates A.R.S. § 36-756.01;
- G. Enter a declaratory judgment that the Department's policy on mandatory testing, vaginal exams, and transport violate both the Arizona and United States Constitution and cannot be used in a licensing decision against a Licensed Midwife;
- H. Enter a preliminary and permanent injunction against the Department from enforcing the above rules and policies in a licensing decision against a Licensed Midwife;
- I. Award Plaintiff its attorney's fees pursuant to A.R.S. § 41-1030;
- J. Award Plaintiff its costs; and
- K. Grant such other relief as is just and proper.

Respectfully Submitted this 5th day of November


Julie Gunnigle

1 Original of the foregoing filed this 5th day of November:

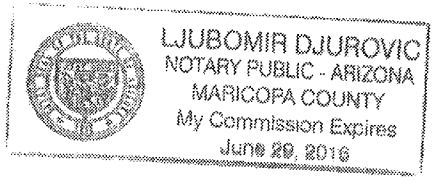
2 Maricopa County Superior Court
3 201 W. Jefferson
4 Phoenix, AZ 85003
5

6 VERIFICATION

7 Wendi L. Cleckner, as President of the Arizona Association of Midwives, does hereby depose and
8 swear that I have read the above complaint and the facts alleged in it are true and correct to the best on
9 my knowledge.

10 Subscribed and sworn to me this 5th day of November 2015, by Wendi L. Cleckner.

Wendi L. Cleckner



[Signature]
Notary Public

16 My Commission expires:
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18 06/29/2016
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