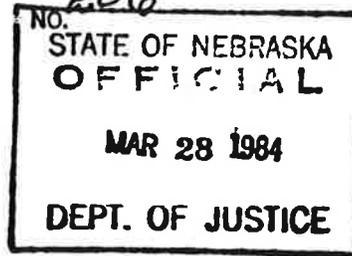


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

March 28, 1984



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Attorney General
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Deputy Attorney General

Senator David Landis
Nebraska State Legislature
812 State Capitol
Lincoln, Nebraska 68509

Dear Senator Landis:

You have asked whether LB 761, Section 15(3) and Section 26, as proposed, or any other statute preclude a father from delivering his own child at home. We have concluded they do not in case of an emergency, but do in nonemergency situations.

LB 761, Section 14 would authorize certified nurse midwives to attend cases of normal childbirth, to provide prenatal, intrapartum and postpartum care, to provide normal obstetrical and gynecological services for women and to provide care for newborns immediately following birth. Section 15(3)(b) would not permit a certified nurse midwife to perform such functions in home deliveries. Under Section 26(1) nothing in the act would prohibit an uncertified person from performing such functions in an emergency situation.

The practice of obstetrics is the practice of medicine and surgery. See, Neb.Rev.Stat. §71-1,102 (Reissue 1981) and State ex rel. Johnson v. Wagner, 139 Neb. 471, 480-482 (1941). Every act or practice falling within the practice of medicine and surgery not specially excepted in Neb.Rev.Stat. §71-1,103 (Reissue 1981) may be performed in this state only by those licensed by law to practice medicine and surgery in the state. There is an exception for persons rendering gratuitous services in cases of emergency. That exception should cover

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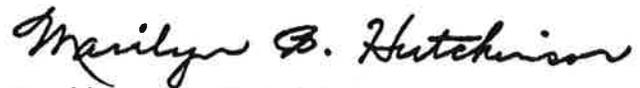
Senator David Landis
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all fathers delivering their own children at home in case of an emergency. We find no exception that would cover all fathers doing so when there is not an emergency. A specific father might be able to practice obstetrics under one of the other exceptions in that statute.

In conclusion, there is an exception in both Neb.Rev.Stat. §71-1,103 and in LB 761 as proposed that would permit a father to deliver his own child at home in an emergency situation. However, we find no authority for him to do so in a nonemergency situation.

Sincerely yours,

PAUL L. DOUGLAS
Attorney General



Marilyn B. Hutchinson
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MBH:cw

cc: Patrick J. O'Donnell
Clerk of the Legislature