

California Statutes Expanded to Include Peer Review Protections and Requirements for Licensed Midwives

On October 13, 2017, Governor Brown signed SB 798, amending Business and Professions Code Section 805, Civil Code Sections 43.7 and 43.8, and Evidence Code Section 1157 to include licensed midwives within their scope. Notably, these changes only apply to licensed midwives, those professionals who pass the North American Registry of Midwives examination and are licensed by the Medical Board of California. This bill does not apply to certified nurse midwives licensed by the California Board of Nursing.

Business and Professions Code Section 805, *et. seq.* provides a peer review and reporting structure for listed professionals. SB 798 amends Section 805 to include licensed midwives under the definition of "licentiate" and to include midwifery under the types of professional societies that may have peer review obligations. Section 805(b) sets forth the mandatory reporting requirements when certain peer review actions are taken or recommended. As of January 1, 2018, licensed midwives will be subject to being reported to the Medical Board under Section 805 ("805 Reports"). SB 798 does not, however, add licensed midwives to the definition of "licentiate" under Section 809(b) of the Business and Professions Code. So, just like physician assistants who were added to Section 805 in 2013, licensed midwives do not fall within the list of practitioners who must be afforded the statutory hearing rights under Section 809.1 through 809.6 when they are the subject of an 805 Report.

Sections 43.7 and 43.8 of the Civil Code protect peer review participants and the peer review bodies of professional societies from monetary liability and damages for acts and proceedings under specified circumstances. SB 798 adds licensed midwives to those protections. As of January 1, 2018, licensed midwives will be protected where their actions are taken as part of a committee to maintain the professional standards of the society or they are a peer review committee reviewing the quality of care of listed professionals, as long as the actions are taken without malice, after reasonable effort to obtain the facts, and with the reasonable belief the action is warranted by the facts. Under Section 43.8 licensed midwives will be protected from monetary liability and damages actions for communicating information when the communication is intended to help in the evaluation of the "qualifications, fitness, character, or insurability of a



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practitioner" (Civ. Code, § 43.8.)

Section 1157 of the California Evidence Code creates an exemption from discovery for proceedings and records of certain organized medical committees responsible for evaluating and improving the quality of care. Section 1157 also prohibits compelled testimony regarding the content of any such meeting. The California legislature enacted this law to promote candor and objectivity in physician review and discussion. The legislature believed that allowing medical practitioners to frankly discuss care and conduct in a confidential setting, without worry about external access to the information, would enhance the quality of medical practice. As of January 1, licensed midwives will share in these protections.

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