



New York State Midwifery Licensure and the Prosecutions of Midwives Elizabeth Catlin and Melissa Carman

The midwives, Elizabeth Catlin and Melissa Carman, have been prosecuted for the crime of unauthorized practice of a profession and related charges. These midwives, however, are trained and hold the Certified Professional Midwife (CPM) credential. Their training satisfies the International Confederation of Midwifery standards, which are the global standards endorsed by the American Congress of Obstetricians and Gynecologists. These midwives were not misleading the people they served; they are valued “English” members of the Amish and Mennonite communities who did nothing more than provide a needed service. They were completely forthcoming and clear with their clients about the kind of credential they had, that it did not meet the current licensing requirement in NY, and that they were not licensed in New York.

Governor Cuomo’s Executive Order 202.11 allows midwives licensed in *another* state to offer their services in New York without a New York license; this includes midwives who hold the CPM, the same credential as those who are being prosecuted.

The training these midwives have, also qualifies them for licensure in New York based on the plain language of the Professional Midwifery Practice Act. That Act, however, has, for political/territorial reasons, been interpreted by the Board of Midwifery to exclude one kind of credential, the Certified Professional Midwife (CPM) that is recognized and establishes a person as licensed in 35 states, in favor of two others, the Certified Midwife (CM) that is licensed in 6 states) and the Certified Nurse Midwife (CNM), that is licensed in 50 states.

The issue comes down to an interpretation of Article 140 of the Education Law, §6955(2)(b) and (c), regarding educational requirements for a professional license. When the law was passed in 1992 there were other midwifery credentials being developed that didn’t require a nursing degree (these are now called the CPM and the CM). Broad statutory language about the educational requirements for licensure being “equivalent to a nursing degree” was intended by the legislature to accommodate these routes to midwifery. But when the Board wrote the rules in 1994, §52.20(b) and §79-5.2(a), they added that licensure required a Master’s degree or higher, excluding the CPM but including the CM. This [article](#)¹ explains this credentialing dispute and how it has contributed to the arrest of Elizabeth Catlin (and other midwives across the country).

Indeed, this credentialing feud left many New York midwives unable to get licensed and vulnerable to arrest. Although it has not yet been introduced, a bill entitled, the Unified Professional Midwifery Practice Act would resolve this decades long dispute. This proposed legislation was developed by and is supported by CNMs, CMs and CPMs alike, including some who were part of the original feud. We are confident that CPMs who are licensed independent providers in 35 states, will also eventually be licensed in New York State. The CPM certification is an important entry-level credential for midwifery that is more accessible to midwives most likely to serve underserved populations and people living in underserved areas. Moreover, when

disasters, including pandemics strike, CPM's have the skills needed to safely support births outside of the hospital setting.

No one denies that Elizabeth Catlin and Melissa Carman were not licensed nor that they were practicing midwifery. But what we take issue with is their prosecution and the particularly excessive nature of it. As with the pregnant women [NAPW represents in criminal cases](#)², (including those arrested for having abortions and experiencing pregnancy losses) prosecutors use existing laws in unauthorized ways in order to target certain reproductive health care decisions, conditions and outcomes. These midwives should not face multiple spurious felonies:

- It does not constitute forgery, identity theft, or falsifying business records when someone uses their own name and credential to identify as a midwife;
- A provider should not be deemed criminally negligent if they have been practicing according to the standards of their credential (expert CPMs have determined that Elizabeth Catlin's conduct satisfied the midwifery standard of care);
- A baby who dies as a result of the natural perils of childbirth is not a victim of homicide;
- Unauthorized practice of a profession does not constitute a felony when it does not involve patient deceit.

The result of these arrests is to rob families of a vital health service. The alternatives they now face - hospital-based care or extremely limited nurse-midwifery practices are not the same, and stand to put them at greater risk especially during the spread of COVID 19.

The prosecutions do not have to and should not proceed during this pandemic, when the need for home birth skills are especially clear. It is contrary to the health and safety of New Yorkers; it is contrary to the demands of the crisis we are facing.

¹ <https://longreads.com/2020/03/10/criminalization-of-the-american-midwife/>

² <https://www.nytimes.com/interactive/2018/12/28/opinion/pregnancy-women-pro-life-abortion.html>