

BORN FROM TRAGEDY: A MOVEMENT TO REFORM HOME BIRTH POLICIES

BY COLIN PETERSON

Minnesota law permits a small group of health care providers—traditional midwives—to independently manage home births without a license from the state or any malpractice insurance. The concerning lack of oversight and accountability in the traditional midwife community is a threat to patient safety. The public has no say in the level of care expected of these midwives, and when tragic mistakes happen during home births, families often will not have the financial resources necessary to pick up the pieces and move forward with their lives.

Our clients endured a heart-breaking tragedy during a home birth managed by traditional midwives. By sharing our clients' story, we hope to build support for strengthening the legal protections for families choosing home births.

In the fall of 2012, a young couple in Minneapolis was expecting their first child. After researching various options for childbirth, they decided to deliver at home with two traditional midwives. In the early morning hours on the day of delivery, the midwives came to the couple's home and stayed for several hours while contractions continued. Based on their vaginal examinations, the midwives assessed the baby's position as head-down and fully engaged in the pelvis, but thought that labor was stalled. Both midwives then left the home and planned to check in later in the day.

Shortly after the midwives left, however, the mother's labor progressed rapidly. Within an hour, the father saw a foot deliver—the baby was breech. The couple desperately called the midwives and then 911 for help. The baby had delivered to his armpits, but his head was entrapped. No one was around to free his head and complete the delivery. With each

passing moment, the baby's fragile brain was being dangerously starved of oxygen.

An ambulance arrived and left 15 minutes after the 911 call, before the midwives could get back to the home. An obstetrician delivered the baby upon arrival at the hospital, but the baby boy had suffered an overwhelming neurological injury. Less than three weeks later, the parents made the painful decision to say goodbye and remove life support.

The parents' trust in their midwives to provide safe and competent care was tragically misplaced. Had the midwives correctly identified the breech presentation, the parents could have gone to a hospital where the baby could have been safely delivered. Instead, the parents endured this horrifying experience all alone, and they lost their son as a result.

The parents came to our firm seeking to use the civil justice system to hold the midwives accountable. But because the midwives did not carry malpractice insurance, they were essentially judgment-proof. We agreed to represent the parents pro bono to try to bring changes to these midwives' practice and to bring awareness to the lack of oversight and accountability of traditional midwives in Minnesota.

Represented by Kathleen Flynn Peterson, Brandon Thompson, and Colin Peterson, the parties recently reached a resolution in which the midwives agreed to certain changes in their practice aimed at improving patient safety. For widespread change to occur, however, legislative action is necessary.

Traditional midwives are allowed to practice in Minnesota with very little oversight and without any

safety net for families when midwives make terrible mistakes. Though Minn. Stat. § 147D purports to regulate the profession, licensure under the statute is completely voluntary. We believe that requiring licensure as a condition of practicing traditional midwifery is a necessary first step to improving home birth policy. Minnesota requires a license to provide various services, from cutting hair to applying nail polish, but not to deliver babies. This must change. Mandatory licensure will ensure that all traditional midwives are held to a high standard of care and accountability.

Of course, even with increased regulation and improved training, mistakes will inevitably occur. Because of the potentially devastating consequences of mistakes made during childbirth, traditional midwives should be required to carry malpractice insurance. If our clients' son had lived, his permanent and profound neurological injuries likely would have necessitated millions of dollars of care throughout his life. No family should be made to bear a crushing financial burden of injuries caused by another's negligence.

Our society must protect our most vulnerable. Commonsense policies can protect babies without limiting parents' freedom to choose how children are brought into the world. We will carry this message to the legislature and will continue to tell our clients' story until change occurs.

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