

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DEBORAH ANN PULLEY,)	
)	
Plaintiff,)	Case No. _____
v.)	
)	
JANICE IZLAR in her official capacity)	COMPLAINT FOR
as President of the Georgia Board of)	DECLARATORY AND
Nursing,)	INJUNCTIVE RELIEF
)	
Defendant.)	

Plaintiff, Deborah Ann Pulley, by and through her undersigned attorneys, files this Complaint against Defendant and alleges as follows:

NATURE OF THE CLAIMS

1. Ms. Pulley has been a Certified Professional Midwife for 24 years. Defendant has threatened her with a \$500 fine every time she uses the title she worked so hard to achieve, or even utters the verboten word “midwife” to describe herself. This civil rights lawsuit seeks to vindicate Ms. Pulley’s right to communicate truthfully about her credentials. That right has been violated by Defendant’s enforcement of titling laws that unconstitutionally infringe Ms. Pulley’s ability to describe her education and expertise.

JURISDICTION AND VENUE

2. Ms. Pulley brings this lawsuit pursuant to the First and Fourteenth Amendments to the United States Constitution, the Civil Rights

Act of 1871, 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Ms. Pulley seeks declaratory and injunctive relief against Defendant's enforcement of Ga. Code Ann. § 43-26-6 and Ga. Comp. R. & Regs. 511-5-1-.01 and .02 to the extent they prohibit her from truthfully describing herself as a "Certified Professional Midwife," "CPM," or "midwife." The enforcement of this speech restriction by Defendant violates Ms. Pulley's constitutional rights, facially and as applied, to speak truthfully about her credentials.

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because it is the "judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. §§ 1391(b), 1390(a)(2).

PARTIES

5. Plaintiff, Deborah Ann Pulley, is a citizen of the State of Georgia.

6. Ms. Pulley is a midwife by virtue of her training, experience, certification, and licensure.

7. Ms. Pulley is not a nurse and has never claimed to be a nurse.

8. Since 1970, Ms. Pulley has attended over 1,000 births, first as a nursing assistant in a Hong Kong hospital and then as a midwife in Georgia.

9. Ms. Pulley was first certified as a Certified Professional Midwife (CPM) by the North American Registry of Midwives (NARM) in 1995.

10. The CPM certification is the basis for licensure as a midwife in about 35 states.

11. Ms. Pulley has been a licensed midwife in Tennessee since 2005.

12. Ms. Pulley helped establish the Georgia Midwifery Association in 1985, which worked closely with the state Department of Health to establish and enforce standards of care for midwives.

13. In 2013, Ms. Pulley worked with the Georgia Midwifery Association and the Department of Vital Records, with approval from the Board of Health, to recognize the NARM CPM certification and allow CPMs to register home births.

14. Ms. Pulley has served on two Department of Health Task Forces, and two legislative study committees as a CPM.

15. In 1998, Ms. Pulley was awarded a certificate of honor from the Georgia Secretary of State for significant contributions to health care.

16. Ms. Pulley joined NARM in 1994 and currently volunteers on its board and serves as its Public Education and Advocacy coordinator. In that capacity she travels around the country, and occasionally abroad, speaking and exhibiting on behalf of NARM at a diverse range of conferences, including the

American College of Nurse Midwives and the National Conference for State Legislators.

17. Ms. Pulley has worked closely with a Certified Nurse Midwife, Kay Johnson, for over 30 years and since 2011 they have operated Atlanta Birth Care together.

18. Ms. Pulley is the office manager for Atlanta Birth Care.

19. Ms. Pulley no longer practices midwifery in Georgia and has turned her attention to advocating for midwifery through her role with NARM and lobbying to change laws in Georgia and elsewhere governing the practice of midwifery. This change in her focus is stated plainly on the website of Atlanta Birth Care, where her biography states: “Until the time of which GA creates a legal path of licensure for the Certified Professional Midwife, I will not be practicing clinically in GA.” Exh. 2.

20. Defendant Janice Izlar is President of the Georgia Board of Nursing and in that capacity is responsible for enforcing the laws, policies, and procedures complained of in this action, including Ga. Code Ann. § 43-26-6(d). She is sued in her official capacity, pursuant to *Ex parte Young*, 209 U.S. 123 (1908), for depriving Ms. Pulley of her First Amendment rights under color of state law.

FACTUAL ALLEGATIONS

21. Since 2015, Georgia has required practicing midwives to obtain a “current certification from the Georgia Board of Nursing to practice as a Certified Nurse-Midwife.” Ga. Comp. R. & Regs. 511-5-1-.02.

22. Certified Nurse-Midwives must be registered nurses. Ga. Comp. R. & Regs. 410-11-.02.

23. Prior to 2015, midwives were not required to be registered nurses, and regulation of midwifery was handled by the Department of Public Health in coordination with the county boards of health. Ga. Code Ann. § 31-26-2.

24. CPMs are allowed to practice independently in 35 states.

25. The distinction between Certified Nurse-Midwives, Certified Midwives, and Certified Professional Midwives is well-established. *See* Exh. 3.

26. In June 2019, the Georgia Board of Nursing sent Ms. Pulley a CEASE AND DESIST ORDER, demanding that she “cease and desist from holding herself out to the public as a ‘Certified Professional Midwife’ and/or using the identifying title ‘midwife’ in any form,” including on Atlanta Birth Care’s website and her “personal social media account.” Exh. 1 at 3.

27. The Order alleges that “the designation or title ‘Certified Professional Midwife’ . . . is not credentialed, recognized or otherwise authorized by the State of Georgia” and that “the use of the title ‘midwife’ . . .

is restricted to a Certified Nurse Midwife (CNM) in the State of Georgia.”
Exh. 1 at 1.

28. The Order also alleges that Ga. Comp. R. & Regs. 511-5-1-.02 purports to forbid a person to “hold himself or herself out to the public as a midwife, unless that person has a current certification from the Georgia Board of Nursing to practice as a Certified Nurse-Midwife” Exh. 1 at 2.

29. The Order also alleges that Ga. Code Ann. § 43-26-6(d) regulates use of the title “‘nurse’ or any other title or abbreviation that would represent to the public that a person is authorized to practice nursing” Exh. 1 at 2.

30. The Order also alleges that Ms. Pulley’s “use of the title ‘Certified Professional Midwife,’ ‘CPM’ and/or general use of the term ‘midwife’ represents to the public that she is licensed to practice nursing and, further, authorized to practice as an advanced practice nurse (CNM)” Exh. 1 at 2.

31. The Order does not allege that Ms. Pulley has practiced midwifery in violation of any law or regulation.

32. To address “[p]otential violations of O.C.G.A. Title 43, Chapter 26” the Order requires Ms. Pulley to “cease and desist from holding herself out to the public as a ‘Certified Professional Midwife’ and/or using the identifying title ‘midwife’ in any form.” Exh. 1 at 3.

33. Any violation of the Order “will subject Respondent to a fine not to exceed \$500.00 for each transaction constituting a violation thereof, pursuant to O.C.G.A. § 43-1-20.1.” Exh. 1 at 4.

34. In response to the Order, Ms. Pulley removed all references to herself using “the title ‘Certified Professional Midwife,’ ‘CPM’ and/or general use of the term ‘midwife,’” Exh. 1 at 2, on Atlanta Birth Care’s website, the NARM website, on her “personal social media account,” Exh. 1 at 1, and any other use of “the identifying title ‘midwife’ in any form.” Exh. 1 at 3.

35. On November 25, 2019, Ms. Pulley signed the Order. Exh. 1 at 5.

36. On December 2, 2019, the Board of Nursing approved and finalized the Order and transmitted the Order to the National Practitioner Data Bank. Exh. 1 at 4.

37. Ms. Pulley did not seek or obtain state judicial review of the Order under the Georgia Administrative Procedure Act, Ga. Code Ann. § 50-13-19(b).

38. Ms. Pulley believes that the title “Certified Professional Midwife,” “CPM,” and general use of the term “midwife” accurately describe her qualifications, background, and experience, and do so better than any other words. However, she has not, and will not, insinuate that she is a nurse, or that she is licensed by the Board of Nursing to practice midwifery in Georgia.

39. Ms. Pulley's use of the title "Certified Professional Midwife," "CPM," and general use of the term "midwife," is expression protected by the First and Fourteenth Amendments.

40. Given Defendant's previous enforcement action against Ms. Pulley, and the Board of Nursing's ongoing threat of enforcement, Ms. Pulley has a credible fear of arrest, prosecution, incarceration, and/or fine if she were to accurately describe her qualifications and her background by using the title "Certified Professional Midwife," "CPM," or "midwife."

41. As a result, Ms. Pulley's ability to engage in protected speech is prohibited and chilled by Defendant's enforcement of the laws complained of in this action, including Ga. Code Ann. § 43-26-6(d) and Ga. Comp. R. & Regs. 511-5-1-.02.

CLAIM FOR RELIEF
(Free Speech)
(First and Fourteenth Amendments)

42. Ms. Pulley incorporates the allegations in the preceding paragraphs.

43. The First Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment, protects the truthful, non-misleading speech that Ms. Pulley would engage in absent Defendant's threatened enforcement of the speech ban.

44. On its face and as enforced by Defendant, the speech ban prohibits Plaintiff from engaging in lawful communication to accurately describe her qualifications and her background by using the titles "Certified Professional Midwife," "CPM," and "midwife."

45. The speech ban imposed by Defendant burdens Plaintiff's right of free speech.

46. The speech ban imposed by Defendant is not tailored to serve a substantial government interest.

47. By prohibiting Plaintiff from accurately describing her qualifications and her background by using the titles "Certified Professional Midwife," "CPM," and "midwife," Defendant currently maintains and actively enforces a set of laws, practices, policies, and procedures under color of state

law that deprive Plaintiff of her right of free speech, in violation of the First Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment and 42 U.S.C. § 1983.

48. Plaintiff has no adequate remedy at law to compensate for the loss of this fundamental freedom and will suffer irreparable injury absent an injunction restraining Defendant's enforcement of the speech ban.

49. Plaintiff is therefore entitled to prospective declaratory and permanent injunctive relief against continued enforcement and maintenance of Defendant's unconstitutional interpretation of Georgia laws, practices, and policies. *See* 28 U.S.C. §§ 2201, 2202.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Court enter judgment in her favor as follows:

A. Declare that Ga. Code Ann. § 43-26-6 and Ga. Comp. R. & Regs. 511-5-1-.01 and .02 violate Plaintiff's right to freedom of speech protected by the First and Fourteenth Amendments on their face and as applied to the extent that they prohibit use of the titles "Certified Professional Midwife," "CPM," and "midwife";

B. Preliminarily and permanently enjoin Defendant, her officers, agents, servants, employees, and all persons in active concert or participation

with her from enforcing Ga. Code Ann. § 43-26-6 and Ga. Comp. R. & Regs. 511-5-1-.01 and .02 to the extent that they prohibit use of the title “Certified Professional Midwife,” “CPM,” and “midwife”;

C. Award Plaintiff her costs, attorneys’ fees, and other expenses in accordance with law, including 42 U.S.C. § 1988; and

D. Order such additional relief as may be just and proper.

DATED: December 11, 2019.

Respectfully submitted,

s/ Glenn A. Delk

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