

**Oregon Health Licensing Agency
Board of Direct Entry Midwifery
Minutes of September 10, 2007**

MEMBERS PRESENT

Betty Griffith, Chairperson
Sherry Dress, Licensed Direct Entry Midwife (LDM)
Nancy Grant M.D.
Rosemary Carvalho, Licensed Direct Entry Midwife (LDM)

MEMBERS ABSENT

Sue Morningstar, Certified Nurse Midwife (CNM) –telephone conference
Holly Scholles, Vice Chairperson

STAFF PRESENT

Susan Wilson, Director
Cerynthia Murphy, Program Coordinator
Samantha Patnode, Program Coordinator

AUDIENCE MEMBERS

Lisa Lehrer, LDM

CALL TO ORDER

Chairperson, Betty Griffith, called the meeting of the Board of Direct Entry Midwifery to order at 9:34 a.m. on Monday, September 10, 2007, at the Department of Agriculture, Basement Hearing Room, 635 Capitol St NE, Salem, Oregon.

DIRECTOR'S REPORT

Ms. Wilson stated the Oregon Health Licensing Agency (OHLA) is undergoing internal reorganization to lay a foundation to provide boards, customers and regulated professionals with the best regulatory services and resources. As OHLA's strategic plan develops, the first shift will occur in agency divisions and staff roles. The Business Administration Division is headed by Richard McNew who oversees agency-wide licensing responsibilities, fiscal management, budget and contract management, economic forecasting, human resources and payroll, information technology and systems management, and facility and property control.

Ms. Wilson added the result of reorganization and review will position the agency to maximize on existing benefits of economies of scale and to make adjustments smoothly and effectively. The agency will carry forward to the 2009 Legislature proposed refinements and promote the value of streamlining and standardizing services and fees. The Direct Entry Midwifery Board volunteered to be a more visible presence and actively support agency streamlining initiatives during the 2009 Legislative Session.

APPROVAL OF AGENDA

Motion

Ms. Griffith advised that the Executive File # 4907 should be Executive File #4906 on the agenda. Ms. Carvalho made a motion and Ms. Dress seconded to approve the agenda. The motion passed with Ms. Griffith, Ms. Dress, Ms. Morningstar, Ms. Carvalho, and Dr. Grant voting aye.

APPROVAL OF MINUTES

MOTION

Dr. Grant reported that on page five of the minutes, PARQ means Procedure Alternatives, Risks, and Questions. Ms. Dress made a motion and Ms. Carvalho seconded to approve the April 16, 2007

minutes. The motion passed with Ms. Griffith, Ms. Dress, Ms. Carvalho, Ms. Morningstar, and Dr. Grant voting aye.

REPORTS

Richard McNew, Business Services Administration Manager, introduced himself to members and addressed the agency budget, revenues, standardization and fees. He reported that OHLA has a budget of \$6,131,235. Mr. McNew explained OHLA's objective in reorganization is geared toward efficiencies -- eliminating unnecessary or redundant processes and improving completed staff work and centralizing work around function to best serve the needs of OHLA customers. He stated the more efficiencies the agency implements the less staff is required, which will have a beneficial affect on license fees. He noted the agency is reviewing every process and position for the agency's new cost allocation plan.

Mr. McNew provided an overview of the internal review that draws on outside resources and other agencies expertise and assistance to recommend efficiencies in restructuring OHLA accounting models, human resources and information technology. He explained that restructuring is an important step in preparing for future growth and expansion without having to increase fees and add staff when a new program is added to the central agency's administrative oversight.

Mr. McNew reported that when the cost allocation model is completed, he will re-project the budget and revenues and provide OHLA's Director, Susan Wilson, with his best assumptions for fees. He addressed changes to the Customer Service area of the agency and plans to add an express lane and on-site service kiosks to provide customers with additional service options.

Focusing on revenues, Mr. McNew reported that the 2007-09 current agency-wide revenue was \$1,410,646. He pointed out the new reporting tools for agency-wide expenditures and revenues based on actual figures. He noted that the members will be provided information on an on-going basis.

ENFORCEMENT

The Oregon Health Licensing Agency's *Complaints and Enforcement Section* conducts statewide, onsite inspections for licensed facilities and responds to and investigates complaints. Onsite facility inspections include surveillance and monitoring businesses, independent contractors and practitioners. Special Investigations are the result of citizen complaints or cases involving critical issues – both civil and criminal, such as bacterial/viral infection outbreaks, unlicensed or illegal practice, prohibited acts, fraud or trade practice violations, incompetence or violations of practice standards. The *Complaints and Enforcement Section* is responsible for taking disciplinary action against licensees who are found in violation / non-compliance with Oregon law.

Tim Molloy, Enforcement & Investigations Supervisor, reported the Board of Direct Entry Midwifery percentage of overall OHLA complaints received for 2007.

January 1 through July 31, 2007:

Total Number of Licenses – 50

Total Number of Complaints – 0

Overall Percent of OHLA Complaints – 0%

Mr. Molloy presented a four year comparison report detailing the increase and decrease in complaints received, the ratio of complaints per licensee base, and orders written for 2003 to 2006.

Regarding enforcement action, there was one closed file. On September 28, 2004, OHLA received a complaint from a patient's mother stating a midwife provided incompetent services which resulted in a fetal demise. This case was closed on June 26, 2007. There are no Board of Direct Entry Midwifery open files to report.

Discussion centered on midwives practicing without a license, and the difficulty for OHLA to protect the public against unscrupulous midwifery individuals who choose not to be licensed, and individuals using the title "midwife" who are dispensing medications. Ms. Wilson added this causes confusion and sends mixed messages to consumers.

Discussion centered on previous legislative review of the practice midwifery in Oregon. She went on to say there is a need to identify what is "outside of the model" which is difficult to do under the current law; the practice is blurred to the public and they don't recognize a difference between volunteer licensure and mandatory licensure. She recommended the Board act on the side of public protection by setting a clear parameter.

Discussion followed about the evolution of midwifery and the need to focus on the person receiving the services; the health of the mother and the baby comes first. Dr. Grant stated all professions re-evaluate the law, even doctors. She continued by explaining the agency and board's mandate is to protect the people receiving the services and it is the responsibility of the state to disclose licensing flaws and to fix the laws whenever public protection and confusion exists.

Lisa Lehrer, audience member and licensed midwife from Corvallis, Oregon, came forward to speak. She stated there was a study about unlicensed midwives doing births for years and they are competent. She went on to say that in Eugene, there is policing among midwives. Ms. Lehrer stated that the Board is doing a good job in responding to complaints.

Discussion continued regarding midwifery licensure in other states, noting that Colorado's licensing fee is \$25, while Oregon's is \$1500. Members recommended forming a working subcommittee to research and collect information on other state's models and to report the findings to the Board. It was recommended that citizens be invited to participate on the subcommittee meetings, which would be open to the public to attend. Cerynthia Murphy confirmed that Betty Griffith and Holly Scholles are members of the Board's Legislation Committee.

MOTION

Ms. Carvalho made a motion and Dr. Grant seconded that the Board expand the Legislation Committee to define the scope of practice and that the meeting be open to outside members. In addition, the Committee will report the findings to the Board and this item be placed on the agenda at each meeting. The motion passed with Ms. Griffith, Ms. Dress, Ms. Morningstar, Ms. Carvalho, and Dr. Grant voting aye.

Tom Molloy reported to the Board regarding *Assault and Battery*, stating it is a term used in the 1960's and earlier in state statutes. The term was also used in some city ordinances and civil law suits. He explained that in the early 1970's Oregon changed the law from Assault and Battery to First, Second, and third Degree Assault, adding Fourth Degree Assault a few years later. He stated

the common denominator in the assault statutes is that physical injury must occur. In the earlier Assault and Battery charge, injury was not always required.

The Board discussed whether or not Emergency Medical Technicians (EMT) will transport a patient who refuses to go to the hospital. Ms. Wilson noted the practitioner is unclear about hospital transport of the mother and/or baby, which surfaced the concern regarding Assault and Battery charges. She stated responsibilities of the midwife need to be clearly defined. Discussion focused on the Directive to Physicians and Family or Surrogates information included in the board packet. Members addressed calling 911, getting an ambulance to respond, and then turning the patient's care over to the physician on duty, recommending use of a transport plan rather than another form. Members agreed the patient should sign a form before the birth agreeing to transportation should an emergency or risk factor happen during the birthing process, clearly defining where the midwife's responsibility begins and ends. Dr. Grant remarked that it is always best to be clear about responsibilities in a setting where the midwife is not under pressure.

MOTION

Ms. Dress made a motion and Dr. Grant seconded that the Board refer this issue to the Safety Committee and that they come back with a recommendation at the next meeting. The motion passed with Ms. Griffith, Ms. Dress, Ms. Morningstar, Ms. Carvalho, and Dr. Grant voting aye.

LICENSING

Ms. Murphy, Program Coordinator, provided the Board with licensing statistics from August 15, 2007, which include the following;

- Total number of active – 50
- Total number of inactive – 19
- Total number of expired – 28

She reported statistics for January 1 to December 31, 2006 which reflects the licensing total for the following areas:

January 1 through December 31, 2006

- Original Licenses Issued – 7
- Licenses Renewed – 36
- License Reactivations – 7

She presented a four year comparison report detailing the increase and decrease in licensing transactions from 2004 to 2006.

OUTREACH AND COMMUNICATION

Kraig Bohot, OHLA communications Officer, came forward to talk about an article which will run on September 16, 2007, in the Eugene Register-Guard. Mr. Bohot thanked the Board of Direct Entry Midwifery members for being available to the media. He went on to say that our goal is to educate the media on the issues as they related to Oregon regulations and to foster an objective, fact-based discussion of these issues. Mr. Bohot assured the board members that if the article does run on Sunday, he will forward it to them. He continued that OHLA expects the article to be balanced and objective, but if board members would like to comment on the article after it is published in an official capacity, to please let him know.

Mr. Bohot noted that the OHLA/DEM Web site will soon feature the OHLA/DEM paper – *Births, Risks & Rifts: Less Emotion, More Objectivity Needed to Understand Issues Involved in Midwifery*. This effort is to continue developing a dialogue on the risk factors of home births compared to hospital births. He noted that we are exploring wider distribution channels for *Births, risks & Rifts*, including a mailing to key stakeholders and interested parties. The goal is to educate those among the group who are unaware of current health and safety requirements of midwifery licensure in Oregon.

Mr. Bohot provided an overview of the OHLA Web site highlighting recent updates to the Board Web page. New features meet the American with disabilities Act (ADA) standards, such as adjustable type size. The new Oregon.gov 3.0 version offers more flexibility for presenting Web content. The short description of key online resources provides visitors with quick and easy access to what they need.

Mr. Bohot reported that OHLA now oversees its ninth volunteer citizen board – the Sex Offender Treatment board (SOTB), and referred members to the agency’s Web site for more information on the new regulatory program.

Mr. Bohot presented an article from the Oregonian, referring to the Oregon Board of Nursing and problems the board is undergoing following a state investigation. The investigation concluded that the Board’s actions lacked a sense of urgency to protect the public.

Members discussed having *Frequently Asked Questions* (FAQ) content on the Web site regarding licensed and non-licensed midwives.

ITEMS FOR BOARD ACTION

2008 SUBCOMMITTEES

Ms. Griffith asked if there were any changes to the subcommittees. Ms. Murphy reported that Mindie Metka will be replacing Michele Bouche, and that appointments are now in the Senate Confirmation phase. Mindie Metka will replace Michele Bouche on the Public Safety Committee. On the Legislation/Rules committee, Nancy Grant, M.D. and Sue Morningstar will replace Betty Griffith and Michele Bouche.

MOTION

Ms. Carvalho made a motion and Ms. Dress seconded to approve 2008 Subcommittees with the following changes. The motion passed with Dr. Grant, Ms. Griffith, Ms. Dress, Ms. Morminstar, Ms. Carvalho voting aye.

Peer Review:	Betty Griffith; Sue Morningstar; Sherry Dress
Education / Examination:	Sue Morningstar; Holly Scholles; Sherry Dress
Enforcement:	Nancy Grant, M.D.; Betty Griffith; Rosemary Carvalho; Alternate Holly Scholles
Public Safety:	Nancy Grant, M.D.; Rosemary Carvalho; Mindie Metka
Legislation/Rules:	Nancy Grant, M.D.; Sue Morningstar; Holly Scholles
Customer Connection:	Holly Scholles

2008 BOARD MEETING DATES

MOTION

Ms. Dress made a motion and Ms. Carvalho seconded to approve the April 21, 2008 and September 15, 2008 meeting dates. The motion passed with Ms. Griffith, Dr. Grant, Ms. Dress, Ms. Morningstar, Ms. Carvalho voting aye.

2008 CHAIR AND VICE CHAIR

MOTION

Ms. Carvalho made a motion and Ms. Morningstar seconded that Betty Griffith remain as 2008 Chair. The motion passed with Dr. Grant, Ms. Dress, Ms. Morningstar, Ms. Carvalho voting aye.

MOTION

Ms. Carvalho made a motion and Ms. Morningstar seconded that Ms. Dress replace Holly Scholles as the 2008 Vice Chair. The motion passed with Ms. Griffith, Dr. Grant, Ms. Morningstar, Ms. Carvalho voting aye.

BOARD INTEREST FILE

Ms. Griffith reported that the Board Interest File is available for review and noted it contained information pertaining to Direct Entry Midwifery.

EXECUTIVE SESSION – ORS 192.660(2)(f)

Chair Griffith called for the Board to enter Executive Session under ORS 192.660(2)(f) at 2:00 pm for the purpose of considering information or records exempt from public inspection. She stated that the Board would be reviewing enforcement file number 06-4929. No recommendations will be made during Executive Session.

Ms. Sherry Dress excused herself from Executive Session due to ac of interest regarding enforcement file number 06-4860; the Board of Direct Entry Midwifery's outcome to the case would directly and specifically affect her financial interests, as file number 06-4860 is a complaint that a "consumer" filed against her professional direct entry midwifery license.

Recusal refers to a public official or employee declining to participate in a matter because of an actual conflict of interest which means that the action taken would directly and specifically affect the financial interest of the official, the official's relative or a business with which the official or a relative of the official is associated. For the record, recusal means the board members do not engage in deliberations or debates, make recommendations, give advice, consider findings, or in any other way assume responsibility for or participate in any aspect of the work or decision making relating to the matter where there is an actual conflict of interest.

Executive Session concluded at 2:50 p.m. and the following actions were taken:

File Number 06-4929

MOTION

Ms. Carvalho made a motion and Ms. Dress seconded that the Board found no violation of rules or conduct regarding this case. The Board requests a letter of concern regarding this case be sent to the licensee, proposing closer supervision and teaching components of midwives. The Board also

requests a letter of explanation, from the licensee, of what occurred in the two weeks prior to the delivery of the stillborn infant. The motion passed with Ms. Dress, Ms. Griffith, Ms. Morningstar, and Dr. Gant voting aye.

File Number 06-4907

MOTION

Dr. Grant made a motion and Ms. Carvalho seconded to write a letter stating the Board reviewed records regarding File Number 06-4907. The Board found no violation of the rules of practice. While we commends assuming the case of this underserved and vulnerable individual, the Board recommends that in the future, when unusual circumstances are encounter seeking consultation at an earlier point in the patient's course. The motion passed with Ms. Morningstar, Ms. Griffith, Ms. Carvalho, and Dr. Grant voting aye.

Ms. Dress recused herself from the proceeding and therefore did not vote or recommend any action on the file.

The meeting adjourned at 3:07 pm

Cerynthia Murphy, Program Coordinator

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