



Oregon Health Licensing Agency (OHLA)
Board of Direct Entry Midwifery



10:00 am Monday April 6, 2009
700 Summer Street N.E., Suite 320
Salem, Oregon

MINUTES

MEMBERS PRESENT

Sherry Dress, Chair (LDM)
Nancy Grant, M.D.
Linda Glenn, Certified Nurse Midwife
Melissa Cheyney, Vice-Chair (LDM)
Susan Moray, (LDM)

MEMBERS ABSENT

Mindie Metka, Certified Nurse Midwife

GUESTS PRESENT:

Lani Doser
Danaya Hall
Mary Allison
Sandra Laden
Autumn Anglin
Lennon Clark
Jen Warnock
Silke Akerson
Patricia Couch

STAFF PRESENT

Samantha Patnode, Examination Analyst
Trampus Schuck, Board Specialist
Brian Deforest, Acting Director
Kraig Bohot, Public Information Officer
Mike Simpson, Quality and Statistical Analyst
Tim Molloy, Regulatory Operations Manager

Amanda Vital
Margaret Porter
Sharron Fuchs
Betty Griffith
Jessica Dolin
Sarah Ericson
Marla Prouty
Debbie Cowart
Holly Scholles

Call to Order

Sherry Dress, Chair, called the meeting of the Board of Direct Entry Midwifery to order April 6, 2009, at 10:15 am, at the Oregon Health Licensing Agency (OHLA), Rhoades Conference Room, 700 Summer Street NE, Salem, Oregon.

I - Approval of Agenda

MOTION:

Melissa Cheyney made a motion and Linda Glenn seconded to approve the agenda for April 6, 2009, moving Public Comment to the beginning of the meeting. The motion passed unanimously.

Public Comment

Lani Doser and Mary Allison testified on statistics and concerns regarding breech, twins, and virginal birth after caesarian (VBAC). Doser questioned if these conditions are appropriate for home birth. Doser stated they are advocates of home birth and only want to improve safety and ensure high levels of care.

Sherry Dress, Chair, opened the meeting to public comment.

Silke Akerson, Jesica Dolin, Sarah Ericson, Holly Scholles, Betty Griffith, and Autumn Anglin spoke in favor of continuing to allow breech, twins and VBAC's in the home birth setting. Dolin read letters from stakeholders in support.

Testimony included individual experiences with positive outcomes regarding breech, twin and VBAC home births. Concerns were raised about the availability of these services to women due to the dwindling number of hospitals willing to perform them. The fear was that if licensed midwives were not providing women these options they may attempt them alone or with lesser trained birthing assistants. Testimony was given stating the original studies regarding VBAC were incorrect and the risks are actually much lower than originally thought.

Members stated there is a lot of work to be done when it comes to informed consent. Comments were made that patients need to be aware of all risks regarding specific procedures as well as home births in general. This would allow patients to make better informed decisions about care. A standardized informed consent should include specific procedures and risks, alternatives, general risks of home birth, and questions about home birth.

Comments were received noting Oregon Administrative Rules require informed consent when an absolute risk is present and the patient decides not to follow the instructions of the LDM or other health care professional. Informed consent could be added to the non-absolute risk criteria, as a requirement for home birth.

Board members provided examples of how they provide informed consent to their patients, and reported that providing VBAC delivery is not favored in the medical community. Members felt that LDMs are becoming the experts in VBAC delivery.

The Board and the public agreed that society has high expectations of services being provided. Documenting patient care is essential to protect practitioners as well as patients. Informed consent is a critical part of that process. The importance of obtaining informed consent, when non-absolute risk criteria are present, is vital to protecting the practice of midwifery in Oregon. Grant stated that she had previously provided the agency with a copy of the informed consent her office uses, similar to the Procedures, Alternatives, Risks & Questions.

The Board deferred the informed consent issue to the Rules Advisory Committee during the next rulemaking.

MOTION:

Susan Moray made a motion and Melissa Cheney seconded to assign Linda Glenn the task of evaluating all past complaint files in order to gather information to help guide the board and the agency in policymaking decisions. The motion passed with Sherry Dress, Linda Glenn, Melissa Cheyney, and Susan Moray voting aye. Dr. Nancy Grant was not present.

II - Approval of Minutes

MOTION:

Glenn made a motion and Moray seconded to approve the September 15, 2008, and March 6, 2009, minutes. The motion passed with Sherry Dress, Linda Glenn, Melissa Cheyney, and Susan Moray voting aye. Dr. Nancy Grant was not present.

III - Reports

A. Director's Report

➤ **2009 Legislation**

Samie Patnode, Policy Analyst, presented 2009 Legislation regarding HB 3232, which was introduced by Representative Mitch Greenlick after Governor's Office pulled the concept due to technical issues and provisions in the "Relating to Clause". Patnode stated that many of the changes are house keeping measures to bring programs into uniformity with the central agency model. The changes are standardized board member terms and licensing cycles. Other areas include language to allow the agency to establish specialty fields of practice for cosmetology, strengthen consumer protection, and referral of impaired practitioners to treatment programs. Specifically, HB 3232 changes the composition of the Board of Direct Entry Midwifery removing one Certified Nurse Midwife and adding one public member.

Patnode provided an overview of legislation sponsored by Representative Mitch Greenlick explaining how the bills could affect the Board and the agency. She noted that specific bills add public members to health related boards including the Board of Direct Entry Midwifery. Patnode explained other bills introduced by Greenlick address required terms in office, improved oversight with regards to impaired licensees, requirements for reporting incidence where scopes of practice may overlap, and restricting the liability of hearings and court fees to complainants.

Patnode stated the agency is not pursuing HB 2242 which would create a new category of definitions and qualifications for licensed direct entry midwives and unlicensed midwives. It would also prohibit, under certain circumstances, licensed midwives from practicing if their license were suspended or revoked. She reported, instead the agency is working with the Governors Office to include OHLA in HB 2118. HB 2118 would prohibit licensed midwives (or any licensee under OHLA jurisdiction, who is not required to be licensed) from practicing if the licensee is suspended or revoked. Patnode clarified questions from the Board.

➤ **Administrative Rules**

Patnode stated the agency filed permanent administrative rules regarding alignment of continuing education requirements for licensed direct entry midwives with the two-year license cycle. She said the permanent rule codified the temporary rule filed in October 2008.

Patnode provided an overview of the temporary rules effective December 1, 2008, and the proposed rules which were filed simultaneously to allow for public comment which ends April 30, 2009. The proposed rules address fingerprinting and criminal background checks and allow OHLA to determine fitness to practice. Patnode stated revised identification requirements have been added to strengthen the agency's ability to confirm an identity.

Patnode stated a public hearing was held on March 2, 2009, with Hearings Officer Bert Krages. She provided the hearings officer report including recommendations to provide potential licensees with a pre-qualification process, regarding fitness to practice at the time of pre-qualification. Patnode said the agency is currently developing a process.

The board discussed background checks and what would prevent an applicant from being licensed. Tim Molloy stated that typically the decision is made based on if the applicant's parole or probation status as well as limitations placed on individuals which would prevent them from working in a particular field. Patnode stated each program will likely have different fitness to practice guidelines. The agency will be compiling information regarding nexus between crimes and authorizations under OHLA jurisdiction.

B. Administrative Services Division

Mike Simpson, Program Analyst, presented an overview of statistics relating to the Board. His report included licensing, examinations, Web site traffic and regulatory statistics for 2007/2009 biennium. Simpson responded to requests made at the last meeting to add keywords to the Web site's Meta tags for enhanced searching. He explained that e-government could not change the tagging system because it would change it for the entire state. The Board was provided with the report and a copy was placed in board documents for retention.

Patnode stated currently, direct entry midwives renew bi-annually and report either 30 or 45 regular continuing education hours every two years depending on the rollout plan from October 1, 2008. Following administrative rulemaking effective on April 1, 2009, the reporting period for the 12.5 legend drugs and devices (LDD) has been extended to every four years. There is no proration for LDD continuing education. She said a complete list of licensees and when their continuing education cycle is available on the agency Web site.

C. Regulatory Operations Division

Tim Molloy, Regulatory Operations Division Manager, presented an overview of regulatory activity. He discussed investigation and final order statistics. Molloy stated the agency has received five complaints since the last Board meeting. Two were established to be unfounded, one the midwife received a civil penalty, and two are still being investigated. The cases are as follows:

Case # 08-5448

The Enforcement Committee met on October 31, 2008 and recommended no violations be issued.

Case # 08-5454

The Enforcement Committee met on October 31, 2008 and determined the licensee had violated of OAR 332-025-0022(7) (a) Standards of Care, Intrapartum Care, Assessment during labor.

Case # 08-5520

The Enforcement Committee met on October 31, 2008 and recommended no violations be issued.

Case #09-5570

Investigation not complete

Case #09-5591

Investigation not complete

Molloy stated case #08-5520 was reviewed by the Enforcement Committee on March 10, 2009, at which time the committee recommended a letter of concern be sent to the licensee. Following consultation with the agency's assistant attorney general the agency was advised to not issue letters of concern because due process would need to be given including right to a hearing. The board concurred.

Molloy stated that during the March 10, 2009, Enforcement Committee meeting concerns were raised regarding the disciplinary process and the current climate in the agency's Regulatory Operations Division. Committee members asked that outreach be done to licensees explaining the compliance process and assuring them that the Regulatory Operations Division is operational. A letter sent to licensees was provided to the Board and procedures used in the Regulatory Operations Division.

Outreach and Communication

Kraig Bohot, Public Information Officer, showed the board the new Regulatory Compliance resource page on the OHLA Web site. Bohot explained this is a page to help licensees through the disciplinary process. He presented the board with OHLA's 10 year report and explained it would be a virtual presentation.

Bohot provided an overview of the new "Frequently Asked Questions" section relating to fingerprinting and the requirements for the new administrative rule, which will clarify the agency's rule regarding fingerprinting and criminal background checks on applicants and current licensees.

1) Committees and Reports

Enforcement Committee reports from October 31, 2008 and March 10, 2009 meetings were provided to the board for review. Mr. Molloy provided an overview of the reports under Regulatory Operations Division.

IV - Items for Board Action

There was no board action at this time.

V - Executive Session

There was no executive session at this time.

VI - Other Board Business

Ms. Patnode provided the board with a response letter to Mary Allison thanking her for her inquiry and concerns. A copy of Ms. Allison's letter was included in the board reports.

A summary of the Statistical Occurrence Reporting from 2006 through 2008 was provided to the Board. Concerns were raised regarding dual reporting from midwives who attend the same birth as well as lack of important data such as fetal demise or transportation requirements. The Board recommended suspending the collection of statistical information as part of the renewal and peer review until accurate information can be obtained from licensees by setting parameters for reporting information.

MOTION:

Linda Glenn made a motion and Susan Moray seconded the recommendation to suspend the collection of statistical information during renewal, until clarification can be provided. The motion passed with Sherry Dress, Linda Glenn, Melissa Cheyney, and Susan Moray voting aye Dr. Nancy Grant was not present.

The meeting adjourned at approximately 3:45 pm.

Prepared by: Trampus Schuck, Board Specialist