

**Oregon Health Licensing Agency
Board of Direct Entry Midwifery
Minutes of April 16, 2007**

MEMBERS PRESENT

Betty Griffith, Chairperson
Holly Scholles, Vice Chairperson
Michele Bouche, Certified Nurse Midwife (CNM)
Sherry Dress, Licensed Direct Entry Midwife (LDM)
Nancy Grant M.D.

MEMBERS ABSENT

Rosemary Carvalho, Licensed Direct Entry Midwife (LDM)
Sue Morningstar, Certified Nurse Midwife (CNM)

STAFF PRESENT

Susan Wilson, Director
Larry Peck, Regulatory Operations Manager
Samantha Patnode, Board Liaison/Executive Assistant

AUDIENCE MEMBERS

CALL TO ORDER

Chairperson, Betty Griffith, called the meeting of the Board of Direct Entry Midwifery to order at 9:30 a.m. on Monday, April 16, 2007, at the Oregon Health Licensing Agency (OHLA) Rhoades Conference Room, 700 Summer St NE, Salem, Oregon.

APPROVAL OF AGENDA

MOTION

Ms. Scholles made a motion and Ms. Dress seconded to approve the agenda. The motion passed with Ms. Dress, Ms. Scholles, Ms. Griffith, Ms. Bouche, and Dr. Grant voting aye.

APPROVAL OF MINUTES

MOTION

Ms. Scholles made a motion and Ms. Dress seconded to approve the September 11, 2006 and February 1, 2007, minutes. The motion passed with Ms. Dress, Ms. Scholles, Ms. Griffith, Ms. Bouche, and Dr. Grant voting aye.

REPORTS

Revenues and Expenditures

Ms. Wilson explained the two main categories of interest. **Personal Services** are employee compensation and related benefits. **Services and Supplies** are non-personnel expenses for agency operations. Charges are divided into two types – direct and indirect – for each program. Indirect costs for agency operation include office supplies, rent, telephones, data processing hardware and software, etc. and costs are distributed by a prorate. Direct charges include attorney general counsel, postage, instate travel or investigative costs, and are distributed at actual rates. She reported the beginning balance as on July 1, 2005 \$12,345 and the cash balance as of April 16, 2007, \$147,867. Ms. Wilson clarified questions from the Board regarding line item expenditures included within the report.

Ms. Wilson pointed out that the uniform fee proposal was not approved. She answered questions from the board and noted that efforts would be made during the interim to review all fees for OHLA programs. Questions were raised that cash balance of the board is increasing giving the board a large carry forward balance. Ms. Wilson reiterated that all programs pay a percentage of the agency functions, which will remain allocated by the number of licensees within the licensed direct entry midwifery pool; however all fees will be reviewed following legislative session. She stated that a full report will be provided under 2007 Legislation.

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.

Mike Tryon, Chief Enforcement Officer, reported the Board of Direct Entry Midwifery percentage of overall OHLA complaints received for 2006 and 2007.

January 1 through December 31, 2006:

- Total Number of Licenses – 45
- Total Number of Complaints – 6
- Overall Percent of OHLA Complaints – 2%

January 1, 2007 through February 28, 2007

- Total Number of Licenses – 44
- Total Number of Complaints – 0
- Overall Percent of OHLA Complaints – 0%

He presented statistical complaint information for January 1, 2006 through December 31, 2006;

January 1, 2006 to December 31, 2006

- Complaints received – 6
- Proposed Orders – 3
- Final Orders – 3

He drew the Board's attention to a summary of the two complaints closed since the September 11, 2006, board meeting and the three open cases waiting for further action.

Licensing

Ms. McCallister, Examination Coordinator, provided the Board with statistics from March 15, 2007 which include the following;

- Total number of **active** – 44
- Total number of **inactive** – 33
- Total number of **expired** – 28

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

January 1, 2006 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 2003 to 2006.

Continuing Education Audit

Ms. McCallister reported that the 2005 Continuing Education Audit was completed noting that the two licensees met the required continuing education hour requirements.

Peer Review Statistical Occurrence Report

Ms. McCallister stated that on October 2, 2006, all licensees were mailed updated peer review forms which included a new statistical occurrence reporting form. She provided a summation of the statistical occurrences from October 2006 through February 2007, noting that a final 2006 report will be given at the Spring 2008 meeting.

- Hospital Transfers In Labor – 29
- Single Births – 226
- Twin Births – 2
- Vaginal Birth after Cesarean – 13
- Breech Births – 4
- Total Live Births – 228
- Total Maternal Deaths – 0

The Board voiced concern regarding the summary report and that information had been omitted from the form regarding fetal death, APGAR scores and other pertinent information on the peer review form needed to be added to the summary. Ms. McCallister stated the form would be revised and reviewed by the Peer Review Committee for completeness.

Outreach and Communication

Kraig Bohot, OHLA Communications Officer, presented the OHLA Board and Council Orientation Video and the importance of volunteer citizens that serve on eight different boards and councils as invaluable regulatory resources, providing professional knowledge and a consumer perspective. Mr. Bohot stated that the video and handbook highlights the roles and responsibilities of volunteer citizen boards and council members, the OHLA regulatory model and professions, and legislation and administrative rulemaking, and additional resources.

Mr. Bohot noted that the Governor's Web page has a weekly feature story, which showcased OHLA's Board and Council Orientation Video. He stated that the story focuses on Oregon's Pioneer Spirit and the volunteer citizens that contribute to the 200 boards and councils in Oregon. Staff stated that copies of the orientation video and the member handbook were provided to the Governors' Office of Executive Appointments as a courtesy.

Mr. Bohot provided the Board and audience members with a tour of the OHLA Web site highlighting recent updates to the Board Web page including the continuing education information and the "*License Inquiry*" link which has been updated to add the current disciplinary status of a license and remove personal address information. Board members voiced concern that license numbers appear on the screen and this information is used when ordering medications often or as identifiers. Mr. Bohot stated that he would research the use of license numbers for prescriptions and if having them accessible to the public is a concern. He pointed out that the National College of Midwifery was added to the approved school list on the Web site.

Mr. Bohot provided the Board with an article relating to lidocaine, a numbing agent used in some practices licensed under OHLA. He said that the article warned that lidocaine should not be used on large portions of the body due to possibility of death. The article will be linked to the midwifery Web site.

Mr. Bohot presented an article from Metro Parent which highlights the Midwife-Doula Difference and how they help parents during labor, delivery and aftercare.

Ms. Dress stated that the Oregonian photographer that featured her in Oregon 24/7 maybe doing another story regarding midwifery in rural areas. She said that she would contact the agency when she received further information.

2007 Legislation

Governor Recommended Budget

Ms. Wilson explained that she presented an OHLA Agency Profile before the Ways and Means Subcommittee on Education on January 22, 2007, to acquaint members with the agency model and answer questions, as a precursor to the budget hearing held February 14, 2007, to address specifics of the budget and review the agency's policy packages. Ms. Wilson noted that although both presentations were successful she was surprised by the Legislative Fiscal Office's (LFO) recommendation presented during the on February 15 Committee Work Session. LFO did not recommend approval of the agency's personnel package, requesting five additional positions, as well as the uniform fee package. She said that LFO has since received the critical information requested regarding workload and staffing needs. During the April 5, 2007 Ways and Mean Committee, Public Hearing and Work Session LFO recommended that the five positions be granted to the agency with the four Complaint and Enforcement positions as limited duration allowing OHLA opportunity to request permanent financing for these positions during the 2009 Legislative Session.

Ms. Wilson provided a copy of the agency's testimony and background information on How a Bill Becomes a Law. She thanked the Board for writing and calling legislators in support of the uniform fee proposal.

VBAC Forum

Ms. Wilson stated that at the September 11, 2007, board meeting, members asked that a discussion take place regarding direct entry midwives providing vaginal births after cesareans (VBAC) in home settings. She noted that Daniel Pettycord, Dr. Kort and Jessica Dolin were notified and provided the opportunity to comment regarding VBAC and they did not attend the meeting. It was identified that a patient who meets the criteria under the Oregon Administrative Rules 332-025-0021 (4)(a) Non Absolute Risk Criteria: "*previous uterine incision other than low transverse cesarean and/or myomectomy with review of surgical records and/or subsequent birth history*" can choose to have a VBAC home birth.

Board members recognized that there have been no complaints received due to a VBAC birth with an unfavorable outcome; only complaints received due to a VBAC birth being performed. Statements were made that the Midwifery Model of Care is much different than the Medical Model of Care, noting the number of VBAC births' being performed by midwives continues to increase due to demand by consumers. They provided examples of recent VBAC births performed in the midwifery community.

Ms. Griffith welcomed board members and the audience to provide their point of view.

Ms. Scholles stated that the since there had been no complaints received regarding midwives performing VBAC births with a bad outcome then the Board should not change or set practice standards for performing VBAC births. She said that if the Oregon Midwifery Council creates guidelines for VBAC births, the board can adopt them.

Ms. Bouche stated that direct entry midwives are currently allowed to perform a VBAC birth which covers them legally.

Dr. Grant stated that the medical community believes that performing VBAC births in homes is unsafe to the mother and the child. She said the real issue is not the performance of VBAC births but other underlying issues that may lead to bad outcomes and what can be done to mitigate them. Concerns were voiced if LDEM's were not allowed to perform VBAC births, it would be taking away a women's choice.

Ms. Griffith referenced the Birthing Center Taskforce noting that during discussion it was determined that breech and twin births would not be allowed within a freestanding birth center; however women still had the choice to have these deliveries outside the hospital setting in the home. She said that originally the Birthing Center Taskforce was against allowing VBAC births within freestanding birth centers; however after lengthy discussions, the taskforce determined VBAC's could be performed within freestanding birth centers with some restrictions.

Dr. Grant said that the Board may want to require direct entry midwives to provide informed consent to patients. Board members agreed that requiring informed consent should be considered on a general basis which would include the risks of an in home birth.

Ms. Wilson stated that requiring informed consent for non absolute risk criteria would keep the consumer aware of the risks involved. Board members asked how much protection informed consent would provide a LDEM if a bad outcome occurred. Dr. Grant stated that informed consent will not stop a consumer from filing law suit or complaint; however, during the investigation process it substantiates that the patient was fully informed of the risks.

Ms. Scholles stated that currently the Oregon Administrative Rules require informed consent when an absolute risk criterion is present and the patient does not want to follow the LDEM or other health care professional instructions. She said that VBAC should not be added to the list of absolute risk criteria but rather the requirement for informed consent could be added to the non-absolute risk criteria.

Board members provided examples of how they provide informed consent to their patients. Ms. Dress said that since providing VBAC delivery is not highly favored in the medical community, LDEM's are becoming the experts in VBAC delivery. She stated that the work provided by LDEM's comes from the heart and is driven by passion for mothers and babies.

Dr. Grant stated that society has a high expectation of services being provided; documenting patient care is essential to protect yourself and your patients, including informed consent. She reiterated the importance of requiring informed consent for non absolute risk criteria to protect the practice of midwifery in Oregon. Dr. Grant stated that her practice uses Physical Activity Readiness Questionnaire (PARQ) for her patients. She stressed while informed consent will not stop people from complaining or filing a law suit; it is one more tool for midwives to use, to document what procedures were followed and that the patient was fully informed of the risks involved.

The Board discussed how common it is for mothers to be adamant about having a vaginal birth regardless of the risks. Dr. Grant concurred that she has experienced women who refuse surgery, even after undergoing emergency procedures, and have been provided with vaginal birth information, despite the risk, her patient's wishes prevailed.

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

Public Comment

Cynthia Luxford, LDEM on the Oregon coast stated that she works in the same area as Dr. Kort and transports patients to the hospital very rarely. She questioned Dr. Kort's sincerity to the patient's protection of having a VBAC birth. Ms. Luxford stated that she was pleased that the Board is not considering making VBAC births absolute risk and noted that protecting women's choice in Oregon is very important.

Ms. Jessica Dolin, LDEM for Andaluz Birth Center reported that since the Birthing Center Taskforce implemented rules for regulating birthing centers she has had six women affected, who had to deliver VBAC from home rather than the birthing center which is closer to the hospital. She stated that she appreciated the taskforce not completely eliminating VBAC's in birthing centers. Ms. Dolin provided the Board with letters from three of her VBAC patients. She read excerpts from the letters which all relayed the same message, women's right to choose how and in what setting they give birth.

Nechama Wildanah thanked the Board for protecting women's rights. She said that she was proud to live in a state where protecting women's right to choose a safe VBAC birth is upheld.

Pamela Echeverio, LDEM in Portland stated that she was very pleased with the progress and openness of the Board, including a willingness to discuss complicated issues such as VBAC births. She reiterated that protecting women's choice is of the utmost importance. Ms. Echeverio provided the Board with examples of successful VBAC births she had performed.

Dr. Grant attempted to explain the medical community's issues around the safety of VBAC home births. She stated physicians are the practitioners treating the patient who arrives as an emergency situation and they don't have any working knowledge of the case or case plan. Without these standard tools for dealing with VBAC emergencies there is a lot of liability in treating patients of this nature and the situations cause many medical professionals to feel that VBAC's cannot be handled properly in the home setting.

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 – Enforcement ORS 192.660(2)(f)

Chair Griffith called for the Board to enter Executive Session under ORS 192.660(2)(f) at 12:33 a.m. for the purpose of considering information or records exempt from public inspection. She stated that the Board would be reviewing enforcement file number 06-4860. No recommendations will be made during Executive Session.

Ms. Sherry Dress recused herself from the Executive Session due to an Actual Conflict of Interest regarding enforcement file number 06-4860, because 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 1:30 p.m. and the following actions were taken:

File Number 06-4860

MOTION

Ms. Scholles made a motion and Ms. Bouche seconded to assess file number 06-4860 a civil penalty of \$1000 for violating OAR 332-025-0021 (2)(a) for failing to assess antepartum absolute risk criteria and will be required to either participate or show completion of a continuing education class related to hypertension/diabetes screening or do a literary review or essay regarding hypertension/diabetes screening. The motion passed with Ms. Scholles, Ms. Griffith, Ms. Bouche, and Dr. Nancy Grant voting aye. Ms. Dress recused herself from the proceedings and therefore did not have the ability to vote or recommend any action on the file.

The meeting was adjourned at 1:51 p.m.

Samantha Patnode, Board Liaison