BEFORE THE HEALTH LICENSING OFFICE
BOARD OF DIRECT ENTRY MIDWIFERY

In the Matter of:	)	**Notice of Intent to Impose Discipline**
Eleanor Legare,	)	**Right to Request a Hearing**
	)	
License No.	)	
DEM-LD-269194	)	
	)	
Respondent,	)	File No. 12-6992

Notice of Proposed Action

Under ORS 676.606, 676.607, 687.445, 687.485, 676.992(1)(d),(m),(2),(4), and OAR 332-030-0000, the Board of Direct Entry Midwifery (Board), in consultation with the Health Licensing Office (Office)[1], is charged with regulating and disciplining licensed direct entry midwives. The Board hereby proposes to:

1) Place the Respondent's license on probation for a period of two years with the following specific requirements:

1.1. Respondent to have 24 months supervision and review of charts by a Board approved supervisor. Respondent is responsible for identifying a supervisor and submitting information, as required by the Board, for approval by the Board. Respondent is responsible for any fees or costs associated with such supervision.

1.2. Respondent to complete Board approved course in documentation within 24 months of the issuance of a final order. Respondent is responsible for identifying a course and submitting the courses for approval by the Board.

1.3. Respondent violates no laws or Oregon Administrative Rules.

2) Respondent is responsible for any fees or costs associated with these requirements, including any fees or costs associated with supervision and chart review.

3) Assess the cost of any disciplinary proceeding against Respondent, up to a maximum of $5,000.

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[1] The Health Licensing Office was formerly Oregon Health Licensing Agency.

FINDINGS OF FACT

1) At all relevant times, Respondent held Direct Entry Midwifery license DEM-LD-269194 issued by the HLO.

2) At all relevant times, Respondent was the midwife responsible for primary care of the client including the client's records, prenatal and intrapartum care.

3) In June of 2012, the client began prenatal care at about 30 weeks with Respondent with no diagnosed absolute risks and twin gestation (dichorionic, diamniotic) as the only known non-absolute risk.

4) On or about July 27, 2012, the client had an ultrasound at 36 weeks, which showed Diachronic twin pregnancy with vertex/breech presentation.

   4.1. Respondent reviewed test results and relied on the client's verbal report from Doctor who performed that ultrasound.

   4.2. Respondent did not consult directly with the Doctor or any Oregon licensed health care provider regarding the twin pregnancy.

5) Between the last ultrasound and the birth, Respondent offered the client an ultrasound, which client declined. Respondent made no notation in the client charts about the recommendation for an ultrasound or the client's subsequent declining of the ultrasound.

6) On or about August 27, 2012, at 2:30 pm, the client began labor at 40 weeks 1 day. Respondent arrived at the client's home at 3:09 pm. The client labored in the birth tub and Baby-A was born at 5:04 pm. No records exist to indicate when the client was complete or when she started pushing

7) On or about August 27, 2012, following the birth of baby-A, the client continued to labor in the birth tub.

   7.1. DEM-A palpated the client, determined that baby-B was longitudinal, and was assumed to be breech as per the 36 week ultrasound.

   7.2. After a fifteen minute break in the contractions the client began pushing in the birthing tub with baby B at about 5:30 pm.

   7.3. Respondent felt the bulging bag and determined baby B to be frank breech.

   7.4. At 5:40 pm, the birth assistant was unable to hear the fetal heart tones, at 5:46 pm and 5:48 pm fetal heart tones were between 90 and 100.

7.5. At 5:51 pm, fetal heart tones were recorded as 90's to 100's and maternal pulse was recorded at 96.

7.6. At 5:54 pm, the birth assistant was again unable to hear the fetal heart tones.

7.7. At 5:55 pm Respondent felt the bulging bag and found what she described as small parts, like an arm, in the bulging bag of water and had the client stand in order to replace the fetal arm. When she did the bag of water broke and the baby B's limp arm and shoulder were presenting out of the vagina.

7.8. The birth assistant called 911 and Respondent and DEM-A got the client out of the tub and on the floor in the McRoberts position while Respondent unsuccessfully attempted internal version and DEM-A attempted external version until the paramedics arrived at 6:02 pm.

8) The client transported by ambulance to Legacy Emanuel for an emergency C-section.

8.1. Baby B was diagnosed with severe hypoxic ischemic encephalopathy and multisystem organ dysfunction and died on August 29, 2012.

9) Respondent was using an electronic charting program named Private Practice and Respondent stated in an interview that all the entries were done by her personally and that times in the labor flow portion are entered manually.

APPLICABLE LAW

Pursuant to **OAR 332-025-0021**(4) when a mother or baby presents with one or more non absolute risk factors, the LDM must:
(a) Arrange for the transfer of care of the mother or baby; or
(b) Comply with all of the following:
(A) Consult with at least one Oregon licensed health care provider regarding the non-absolute risk factors present.
(B) Discuss the non-absolute risk(s) with the mother, including:
(i) Possible adverse outcomes;
(ii) Whether an out-of-hospital birth is a reasonably safe option based upon the risk(s) present;
(iii) The anticipated risk(s) and the likelihood of reducing or eliminating said risks;
(iv) The midwife's experience with said risk(s);
(v) The ease and time involved in accomplishing transport or transfer of care;
(vi) Recommendation(s) given by the consulting Oregon licensed health care provider(s); and
(vii) Recommendation(s) given by the LDM to the mother.
(C) Document discussion of information listed in subsection (B).
(D) To the extent the LDM acts contrary to the recommendations given by the consulting Oregon licensed health care provider, the LDM must document the justification.
(E) Informed consent must be obtained and documented in records.
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(5) The following are non-absolute risk factors
(a) MATERNAL ANTEPARTUM NON-ABSOLUTE RISK CRITERIA:
* * *
(M) Dichorionic, diamniotic twins; * * *
(b) INTRAPARTUM NON-ABSOLUTE RISK CRITERIA:
* * *
(E) Frank and complete breech presentation, as determined by vaginal examination.
* * *
(b)(E) INTRAPARTUM NON-ABSOLUTE RISK CRITERIA:
Frank and complete breech presentation, as determined by vaginal examination;

Pursuant to **OAR 323-025-0022** (3) In addition to and not in lieu of the MANA core competencies, an LDM must adhere to the following mother and baby care practice standards:
(a) Care During Pregnancy (Antepartum) - The LDM must:
(B) Determine the need for consultation or referral as appropriate;
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(3)(b) Care During Labor, Birth and Immediately Thereafter (Intrapartum) the LDM must:
(B) Determine the need for consultation or referral as appropriate;
(C) Make appropriate and ongoing risk assessment and document maternal and fetal status and response throughout labor
(D) Evaluate maternal and fetal well-being during labor, birth and immediately thereafter, including relevant historical data;
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(K) Evaluate fetal and maternal anatomy and their interactions as relevant to assessing fetal position and the progress of labor;
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(4) Declined Procedure: In the event the mother refuses any testing or procedures required by administrative rule or recommended by the LDM, the LDM must document discussion with the mother of why the test or procedure is required or recommended, and document the mother's refusal of the test or procedures, including the mother's signature in the chart. In addition, the LDM must follow the requirements of ORS Chapter 432, 433.306, OAR 333-021-0800 and 333-024-0205 through 0235 when the mother declines administration of vitamin K or infant metabolic screening.

Pursuant to **OAR 332-025-0110** Records of Care Practice Standards
(1) The LDM must maintain complete and accurate records of each mother and baby.
(2) Records mean written documentation, including but not limited to:
(a) Midwifery care provided to mother and baby;
(b) Demographic information;
(c) Medical history;
(d) Diagnostic studies and laboratory findings;
(e) Emergency transport plan defined under OAR 332-025-0020;
(f) Informed consent and risk information documentation under OAR 332-025-0120;
(g) Health Insurance Portability and Accountability Act (HIPAA) releases;

(h) Description of the reasoning for transfer of care defined under OAR 332-025-0021 of the mother and baby;
(i) Documentation of all consultations and recommendations from health care providers as defined under OAR 332-015-0000;
(j) Documentation of all consultations and recommendations regarding non-absolute risk factors from Oregon licensed health care providers as defined under OAR 332-025-0021;
(k) Documentation of any declined procedures under OAR 332-025-0022;
(l) Documentation of termination of care under OAR 332-025-0130; and
(m) Documentation that the patient disclosure form has been received by the mother under OAR 332-025-0020.
(3) Records must be maintained for no less than seven years. All records are subject to review by the agency.
(4) All records must be legibly written or typed, dated and signed.
(5) All records must include a signature or initial of the LDM.

CONCLUSIONS OF LAW

1) By failing to either arrange for the transfer of care of the mother or baby or to consult with at least one Oregon licensed health care provider regarding the non-absolute risk of dichorionic, diamniotic twins, *see* OAR 332-025-0021(5)(a)(M), the Respondent violated OAR 332-025-0021(4)(a) and (b)(A)(B) and OAR 332-025-0022(3)(a)(B).

2) By failing to either arrange for the transfer of care of the mother or baby or to consult with at least one Oregon licensed health care provider regarding the non-absolute risk of Frank breech presentation, *see* OAR 332-025-0021(5)(b)(E), the Respondent violated OAR 332-025-0021(4)(a) and (b)(A)(B) and OAR 332-025-0022(3)(a)(B).

3) By failing to document the mother's refusal of a recommended test or procedures, including the mother's signature in the chart, the Respondent violated OAR 332-025-0022(4) and OAR 332-025-0110(1),(2)(f),(k).

4) By failing to adequately assess the fetal heart tones and the possibility of malposition and prolapsed umbilical cord, the Respondent violated OAR 332-025-0022(3)(b)(C), OAR 332-025-0022(3)(b)(D) & OAR 332-025-0022(3)(b)(K).

PROPOSED ORDER

Pursuant to ORS 676.612(1) and ORS 676.992(2), the office may take any disciplinary action it finds proper, including revocation of Respondent's license, for any violation.

Pursuant to OAR 332-030-0000, the Oregon Health Licensing Agency, in consultation with the Board of Direct Entry Midwives, finds and hereby proposes to ORDER:

1) **Place the Respondent's license on probation for a period of two years with the following specific requirements:**

1.1. **Respondent to have 24 months supervision and review of charts by a Board approved supervisor. Respondent is responsible for identifying a supervisor and submitting information, as required by the Board, for approval by the Board. Respondent is responsible for any fees or costs associated with such supervision.**

1.2. **Respondent to complete Board approved course in documentation within 24 months of the issuance of a final order. Respondent is responsible for identifying a course and submitting the courses for approval by the Board.**

1.3. **Respondent violates no laws or Oregon Administrative Rules**

2) **Respondent is responsible for any fees or costs associated with these requirements, including any fees or costs associated with supervision and chart review.**

3) **Assess the cost of any disciplinary proceeding against Respondent, up to a maximum of $5,000.**

DATED 12-11-14

Colleen Forbes, LDM
President, Board of Direct Entry Midwifery

Enclosures: Option form, Notice of Contested Case Rights and Procedures
CERTIFIED MAIL: 7010 3090 0000 6746 4821

NOTICE OF RIGHTS TO REQUEST A HEARING

You have the right to a hearing to contest this order. The hearing, if requested, will be conducted according to the Administrative Procedures Act, ORS chapter 183. A **request for hearing** must be in writing and **must be received** by the Health Licensing Office **within 30 days** from the date this Notice was mailed to you. The written request for a hearing must be sent to the Health Licensing Office, 700 Summer St. NE, Suite 320, Salem, Oregon 97301-1287.

If you request a hearing, you **may be required to provide, with your request, an answer** to each factual matter alleged in the Notice and a short and plain statement of any **affirmative defense** you will raise at the hearing. Please see OAR 331-020-0020. If a specific response is required, factual matters alleged in the notice and not denied in the answer shall be

presumed admitted; failure to raise a particular defense in the answer will be considered a waiver of such defense; new matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the HLO; and evidence shall not be taken on any issue not raised in the notice and the answer. You may be represented by an attorney. If you cannot afford an attorney, you may contact Oregon's Legal Aid providers to attempt to obtain free or low-cost representation.

If you are an active duty service member you have the right to request a stay of proceedings under the federal Service members Civil Relief Act and may contact the Oregon State Bar toll-free at (800) 452-8260, or the Oregon Military Department toll-free at (800)452-7500, or the United States Armed Forces Legal Assistance (AFLA) locator at http://www.militaryonesource.mil or http://legalassistance.law.af.mil.

You will be notified of the date, time and place of the hearing. If you request a hearing you may be represented by an attorney at hearing and you may subpoena and cross-examine witnesses. If you cannot afford an attorney, you may contact an Oregon legal aid office to apply for assistance. If you request a hearing, you will also be given information on the procedures, right of representation and other rights relating to the conduct of the hearing before the commencement of the hearing.