

BEFORE THE HEALTH LICENSING OFFICE
OF THE STATE OF OREGON
BOARD OF DIRECT ENTRY MIDWIFERY

In the matter of)	Proposed/Final Order
Brenda Holcombe)	Assessing Civil Penalty
#0618961382)	Notice of Right to
)	Request a Hearing
)	
Licensee)	File No. 02-10

The Health Licensing Office in consultation with the Oregon Board of Direct Entry Midwifery Hereby assesses a civil penalty against you in the amount of \$9,000 on the following grounds

I.
FACTUAL ALLEGATIONS

- 1) During October 5 and 6, 2002, you failed to identify absolute and non-absolute risks during the birthing process. (four counts) (\$4,000)

Absolute and Non-absolute Risk:

- 211-B a) Birth mother failed to progress in active phase of labor with presence of strong contractions.
 - 211-B b) Fetus failed to descend within the expected time during active pushing.
 - 211-C c) Birth mother retained placenta with suspected placenta accreta and retention time greater than three (3) hours.
 - 211-D d) Apgar less than seven (7) at ten (10) minutes and hypotonia.
- 211(2) During the above mentioned birth you failed to take appropriate action to ensure the Health and well being of the mother and the newborn. (\$1,000)
 - 211(3) During the above mentioned birth you failed to require your client to be transported to a hospital for the birth. (\$1,000)
 - 211(4) During the above mentioned birth you failed to contact emergency medical assistance for transport to hospital. (\$1,000)

- 5) ²¹² During the above mentioned birth you failed to consult with a licensed health care provider with hospital privileges. (\$1,000)
- 6) ²¹² During the above mentioned birth you failed to document consultation in client record and failing to document written informed choice. (\$1,000)

The Board has designated its files on the subject of this matter as the record in this case for purpose of proving a prima facie case upon default.

II. STATUTES AND RULES

The above conduct is a violation of Oregon Laws 1993, Chapter 362 and/or Oregon Laws 1999, Chapter 990, which states in relevant part:

OAR 332-025-0021

(1) "**Absolute Risk**" as defined in OAR 332-015-000(31)(a) and indicators referenced in the following subsections, means that clients presenting these conditions or clinical situations are felt to be at extreme obstetrical consideration appropriate candidates for out-of-hospital birth. Clients must plan for an in hospital birth if risk factors are present in the antepartum, intrapartum or postpartum periods. If a risk factor first develops when birth is imminent, the individual midwife must use judgment taking into account the health and condition of the mother and baby to determine which is the most safe for the mother and baby.

(b) **INTRAPARTUM ABSOLUTE RISK CRITERIA:** suspected uterine rupture; active herpes lesion in an unprotectable area; prolapsed cord or cord presentation; abnormal bleeding; persistent fever of 202 degrees Fahrenheit (38 degrees Centigrade) or above, taken orally; pre-eclampsia / eclampsia; amniotic fluid with thick or moderate/thick meconium and birth not imminent; evidence of fetal distress or abnormal fetal heart rate pattern unresponsive to treatment or inability to auscultate fetal heart tones; excessive vomiting, dehydration, acidosis or exhaustion unresponsive to treatment; blood pressure greater than or equal to 150/100 which persist or rises, and birth is not imminent; failure to progress in active phase of labor with presence of strong contractions; failure to descend within the expected time during active pushing, generally 2 hours of primip and 1 hour for multip; current substance abuse.

(c) **POSTPARTUM ABSOLUTE RISK CRITERIA:** retained placenta with bleeding; retained placenta with suspected placenta accreta; retained placenta greater than 3 hours; retained placenta greater than 30 minutes with abnormal or significant bleeding; laceration requiring hospital repair; uncontrolled postpartum bleeding; increasingly painful or enlarging hematoma; development of pre-eclampsia; and signs or symptoms of shock unresponsive to treatment.

(d) **INFANT ABSOLUTE RISK CRITERIA:** Apgar less than 7 at 10 minutes of age; respiration rate greater than 80 in the first 2 hours postpartum and greater than 60 thereafter, accompanied by any of the following lasting more than one hour without improvement: nasal flaring, grunting or retraction; cardiac irregularities, heart rate less than 80 or greater than 160 (at rest) or any other abnormal or questionable cardiac findings; seizures; temperature less than 97 degrees Fahrenheit (36.1 degrees Centigrade) or greater than 100.7 degrees Fahrenheit (38.2 degrees Centigrade) when taken rectally or any other evidence of infectious process; apnea; central cyanosis; large or distended abdomen; any infant which has required intubation; any infant where meconium has been visualized at the level of the cords; any condition requiring more than 12 hour of observation postbirth; gestational age under 36 weeks; persistent poor suck, hypotonia or a weak or high pitched cry; persistent projectile vomiting or emesis of fresh blood; any infant with active AIDS; and signs and symptoms of infection in the newborn.

(2) **"Non-absolute"** risk as defined in OAR 332-015-0000 (31)(b) and indicators referenced in the following subsections, includes situations that sometimes place a client at increased obstetric or neonatal risk. Some of the factors to consider regarding these non-absolute criteria would include the specific midwife's experience and expertise, the particular birth setting, and the ease and time involved in assessing emergency transport/back-up systems. In order to allow for the individualization of these situations, the non-absolute risk criteria do not automatically exclude a client from out-of-hospital birth. Instead, they require careful consideration and consultation shall be with a licensed health care provider with hospital privileges and may be conducted by telephone depending on the clinical and geographical situation. Consultation shall be documented in the client records as well as documentation of written client informed choice.

The Board has the authority to impose a civil penalty under ORS 687.450 (2), which state in relevant part:

ORS 687.450

- (2) When the board finds any person has violated any grounds set forth in subsection (1) of this section, the board may take one or more of the following disciplinary actions:

- (c) Impose a civil penalty not to exceed \$1,000 for each count or separate offense.

ORS 183.090

- (1) A civil penalty imposed under this section shall become due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal.

- (6) When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

CONCLUSION

The foregoing is grounds for a civil penalty of \$9,000

NOTICE OF RIGHT 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 Board of Direct Entry Midwifery within 30 days from the date this Order Imposing Civil Penalty was mailed to you. The written request for a hearing must be sent to the Board of Direct Entry Midwifery, 700 Summer St. NE, Suite 320, Salem, Oregon 97301-1287. If you request a hearing, 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 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.

If you do not file a timely request for hearing, this order becomes final by default 31 days after the date this Order Assessing Civil Penalty and Notice of Right to Request a Hearing was mailed to you. If the order becomes final by default, you may petition for judicial review of a final order to the Court of Appeals as provided by ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this order was mailed. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal. When the order becomes final, the amount of the civil penalty must be paid within 10 days. If it is not paid within 10 days, the order may be recorded with the county clerk in any county of this state in the county lien records.

DATED APR 21 2003.

Susan K. Wilson, Director
Health Licensing Office
Board of Direct Entry Midwifery



Bob Gruchalla
Chief Enforcement Officer
Regulatory Operations Division

Enclosures: Option form

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