BEFORE THE HEALTH LICENSING OFFICE
BOARD OF DIRECT ENTRY MIDWIFERY

In the Matter of:	)	**Notice of Intent to Suspend License Assess a**
Joanna Jech	)	**Civil Penalty and Impose Additional Discipline**
	)	**Right to Request a Hearing**
License No.	)	
DEM-LD-10121585	)	
	)	
Respondent,	)	Agency File No. 12-6670

Notice of Proposed Action

Under ORS 676.606, 676.607, 687.445, and 687.485, and OAR 332-030-0000, the Board of Direct Entry Midwifery (Board), in consultation with the Health Licensing Office (Office) (*formerly* Oregon Health Licensing Agency), is charged with disciplining licensed direct entry midwives. Pursuant to ORS 676.612(2)(n) and 676.992(1)(d) and (m), (2) and (4), the Board hereby proposes to:

1) Suspend Direct Entry Midwifery License # DEM-LD-10121585 license for one year and completion of all other required conditions for licensure, including completion of the board approved classes described below.

2) Require the Respondent to attend and complete a board approved class related to the identification of risks and management of pregnancy. Respondent is responsible for finding the class and is responsible for any fees or costs associated with the class. The Respondent must submit proof of successful completion of the class in order for the suspension to be lifted after the one year period.

3) Require the Respondent to attend and complete a board approved class related to fetal assessment. Respondent is responsible for finding the class and is responsible for any fees or costs associated with the class. The Respondent must submit proof of successful completion of the class in order for the suspension to be lifted after the one year period.

4) Assess the costs of any disciplinary proceeding against Respondent not to exceed $5000.

FINDINGS OF FACT

1) At all relevant times, Joanna Jech (Respondent) held Direct Entry Midwifery license DEM-LD-10121586 issued by the Office

2) Client began her prenatal care with the Respondent at Andaluz Water Birth Center on April 30, 2009.

3) Client arrived at Andaluz Water Birth Center on December 29, 2009, at around 8:10 AM.

4) Client reported she had been awake for 48 hours straight and was delirious, exhausted and in extreme pain. Client was told to rest for her exhaustion. Client was unable to rest or sleep.

5) On December 30, 2009, at about 2:06 a.m. Client was catheterized, and produced one quarter cup of urine. Client was not provided adequate hydration nor transport Client at that time. Only sips of water, "EmergenC" and a smoothie were documented over the entire course of the labor. No documentation was made with a plan for hydration after the clear low urinary output at 18 hours into the labor until ultimate transport at 24 hours, including at least 8 hours of pushing efforts.

6) On December 30, 2009, Respondent was called as a consultant, and at approximately 3:00 a.m. arrived at the birth center. Respondent remained at the Andaluz Water Birth Center and was actively involved with the management of the delivery.

7) On December 30, 2009, at about 3:37 a.m. Respondent administered sterile water papules to Client.

8) On December 30, 2009, at about 6:26 a.m. Respondent performed a vaginal exam on Client. Client was a -1 station. The fetal heart tones were documented to be 130 -150, but not clear as to timing with contractions.

9) On arrival at the Birth Center, fetal heart tones were assessed during and after contractions and reported to be in the 144-168 range. At 9:30 PM, with the client at 9 cm, the fetal heart tones were documented to be 108-120 during contractions. At 6:26 AM, the fetal heart tones were documented to be 130 -150, but not clear as to timing with contractions. On arrival at the hospital, the heart tones were documented to be baseline of 120 with late decelerations and an emergency cesarean section was performed.

10) On December 30, 2009, at about 9:27 AM, Client was transported to Legacy Emanuel Hospital. On arrival at the hospital, the heart tones were documented to be baseline of 120 with late decelerations and an emergency cesarean section was performed.

APPLICABLE LAW

Citations are to statutes and rules in effect at time of violations.

OAR 332-025-0021
Risk Assessment Criteria

Licensed direct entry midwives shall assess the appropriateness of an out-of-hospital birth for each client, taking into account the health and condition of the mother and fetus or baby according to the following two categories of risk assessment criteria in determining appropriate care:

(1) "Absolute risk" as defined in OAR 332-015-0000(36)(a). Clients who present one or more of the following absolute risk factors are not appropriate candidates for out-of-hospital birth:

(a) When absolute risk factors are present during the antepartum period, the midwife and the client must plan for an in-hospital birth;

(b) When absolute risk factors appear during the intrapartum period, the midwife must arrange to have the client transported to the hospital unless the birth is imminent;

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(2) The following constitute absolute risk factors:

(a) ANTEPARTUM ABSOLUTE RISK CRITERIA: ***; persistent severe abnormal quantity of amniotic fluid; *** pregnancy lasting longer than 42 weeks (14 days past the due date) with an abnormal non-stress test; any pregnancy with abnormal fetal surveillance tests; ***

(b) INTRAPARTUM ABSOLUTE RISK CRITERIA: ***; 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; ***.

(3) "Non-absolute" risk as defined in OAR 332-015-0000(36)(b). Clients who present one or more non-absolute risk factor are at increased obstetric or neonatal risk. When one or more non-absolute risk factor presents, the midwife must either arrange for the transport or transfer of care of the client(s) or comply with all of the following:

(a) Consult with at least one Oregon licensed health care provider as defined in OAR who has direct experience handling complications of the risk(s) present as well as the ability to confirm the non-absolute risk. Additional complicating factors identified by the consultant must be considered in order to determine if a home birth is indicated. The midwife must consult with the provider(s) regarding appropriate care related to the birth considering the following: the risks present, the risks anticipated, the midwife's experience, the birth setting, and the ease and time involved in obtaining emergency transport or transfer of care. The consultation(s) must be documented in the client records, including all recommendations given by the provider(s). The consultation(s) may be conducted in person or by direct telephone conversation depending on the clinical and geographical situation.

(b) Determine whether a home birth is a reasonably safe option based upon the risks present, the anticipated risks, the likelihood of reducing or eliminating said risks, the midwife's experience, the birth setting, the ease and time involved in obtaining emergency transport or transfer of care and the recommendation of the licensed health care provider(s) with whom the midwife consulted.

(c) Advise the client regarding the non-absolute risk(s), possible adverse outcomes, and the recommendation(s) given by the licensed health care provider(s) with whom the midwife consulted.

(d) Document the advice given to the client by the midwife and, if applicable, obtain the client's informed consent to proceed with an out-of-hospital birth. In addition, to the extent the midwife acts contrary to the recommendation(s) given by the licensed health care provider(s) with whom the midwife consulted, the midwife must document the reasons justifying acting contrary to the provider's recommendations and obtain informed client consent.

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4) The following are non-absolute risk factors:

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(b) INTRAPARTUM NON-ABSOLUTE RISK CRITERIA: ***; maternal exhaustion unresponsive to treatment; ***.

OAR 332-025-0022
Standards of Care

Standards of care for the determination of initial visits, laboratory tests, prenatal visits, education/counseling/anticipatory guidance, emergency access, intrapartum care, postpartum care, and newborn care include:

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(a) Non-stress test or accelerated auscultation test every three to four days, with an amniotic fluid index at 42 weeks; or,

(b) Biophysical profile weekly.

CONCLUSIONS OF LAW

1. By failing to arrange to have Client transported to a hospital when presented with an intrapartum absolute risk of OAR 332-025-0021(2)(b), evidence of fetal distress or abnormal fetal heart rate pattern unresponsive to treatment or inability to auscultate fetal heart tones, the Respondent violated OAR 332-025-0021(1)(b).

2. By failing to arrange to have Client transported to a hospital when presented with an intrapartum absolute risk of OAR 332-025-0021(2)(b)***, dehydration, *** the Respondent violated OAR 332-025-0021(1)(b).

3. By failing to arrange to have Client transported to a hospital or failing to consult with an Oregon licensed heath care provider, discuss the non-absolute risk and obtain informed consent when presented with the intrapartum non-absolute risk of OAR 332-025-0021(4)(b), maternal exhaustion unresponsive to treatment, the Respondent violated OAR 332-025-0021(3)(a) through OAR 332-025-0021(3)(d).

PROPOSED ORDER

Pursuant to ORS 676.612(1) and ORS 687.445, the Board of Direct Entry Midwives, in consultation with the Office, proposes to:

1) Suspend Direct Entry Midwifery License # DEM-LD-1004924 license for one year and completion of all other required conditions for licensure, including completion of the board approved classes described below.

2) Require the Respondent to attend and complete a board approved class related to the identification of risks and management of pregnancy. Respondent is responsible for finding the class and is responsible for any fees or costs associated with the class. The Respondent must submit proof of successful completion of the class in order for the suspension to be lifted after the one year period.

3) Require the Respondent to attend and complete a board approved class related to fetal assessment. Respondent is responsible for finding the class and is responsible for any fees or costs associated with the class. The Respondent must submit proof of successful completion of the class in order for the suspension to be lifted after the one year period.

4) Assess the costs of any disciplinary proceeding against Respondent not to exceed $5000.

DATED 1-14-15

Colleen Forbes, Chair
Board of Direct Entry Midwifery

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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 Oregon Health Licensing Agency **within 30 days** from the date this Notice was mailed to you. The written request for a hearing must be sent to the Oregon Health Licensing Agency, 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 agency; 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 Servicemembers 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.

If you do not file a timely request for a hearing, the Agency's file may be made part of the record for the purpose of proving a prima facie case. The Oregon Health Licensing Agency may issue a final order by default and impose the above sanctions against you. If Licensee fails to request a hearing within 30 days, or fails to appear at the scheduled hearing, the OHLA may issue a final order by default and impose the above sanctions against Licensee. The agency file will serve as the record in this case for the purpose of proving a prima facie case upon default.

SENT VIA CERTIFIED MAIL #: 70103090000 67464869