

**OREGON HEALTH LICENSING OFFICE**

In the Matter of:	)	Case No. 04-4281
	)	NOTICE OF PROPOSED
ELEANOR LEGARE	)	LICENSE REVOCATION,
DEM-LD-269194,	)	CIVIL PENALTY,
	)	AND NOTICE OF
Respondent.	)	RIGHT TO HEARING

The Oregon Health Licensing Office (Agency), in consultation with the Oregon Board of Direct Entry Midwifery, is charged with enforcing statutes and administrative rules pertaining to licensed direct entry midwifery under ORS 676.600 to 676.625 and 676.992, and under ORS 687.405 to 687.495. Acting by the authority of ORS 676.612 and 687.445, the Agency proposes to revoke license DEM-LD-269194 issued to Eleanor Legare (Respondent) for: 1) negligence, incompetence, or departure from or failure to conform to standards of practice in violation of ORS 676.612(1)(j); 2) failure to maintain a plan for emergency transport of Client in violation of OAR 332-025-0020(12); 3) failure to arrange transport of Client to the hospital when absolute risk factors appeared during the intrapartum period in violation of OAR 332-025-0021(1)(b) and (2)(b); 4) failure to arrange transport or transfer of care of Client, or consult with an appropriate Oregon licensed health care provider, when non-absolute risk factors appeared during the intrapartum period in violation of OAR 332-025-0021(3) and (4)(b); 5) failure to appropriately assess or evaluate fetal heart tones (FHT) during labor in violation of OAR 332-025-0022(7)(a) and (7)(b). See ORS 676.612(1)(n). Specifically, the grounds for this revocation and the assessment of civil penalties are as follows:

**FINDINGS OF FACT**

1. In late January 2004, Client engaged the services of Respondent and Katherine McLachlan (see case no. 04-4280), who were owners of the company "A Woman's Way Midwifery Services";
2. From that point up to September 9, 2004, Respondent and McLachlan performed midwifery services for Client;
3. On September 8, 2004, at or about 1:20 p.m., McLachlan spoke with Client over the telephone. Client reported nausea, muscle cramping, and shaking, along with no fever. McLachlan indicated that it appeared labor was starting;

4. On September 8, 2004, at or about 3:45 p.m., McLachlan arrived at Client's home for initial labor assessment and Client's temperature was reported at 103 degrees F oral. McLachlan auscultated FHT in the 150 beats per minute range. McLachlan also recommended extra strength Tylenol for Client;

5. On September 8, 2004, at or about 4:45 p.m., McLachlan spoke with Client's mother over the telephone regarding Client's fever. In response to inquiry from Client's mother, McLachlan admitted that she and Respondent had no backup physician;

6. On September 8, 2004, at or about 5:00 p.m., Client's husband reported to McLachlan over the telephone that Client's temperature was 102 degrees F oral;

7. On September 8, 2004, at or about 6:30 p.m., Client's husband reported to Respondent over the telephone that Client's temperature was 98.6 degrees F oral;

8. On September 8, 2004, at or about 7:45 p.m., Respondent arrived at Client's home and Client's temperature was reported at 98.7 degrees F oral. Respondent auscultated FHT in the 140 beats per minute range;

9. On September 8, 2004, at or about 11:00 p.m., McLachlan arrived at Client's home and was unable to auscultate FHT;

10. On September 8, 2004, at or about 11:10 p.m., McLachlan spoke with Respondent over the telephone and reported that she was unable to auscultate FHT;

11. On September 8, 2004, at or about 11:30 p.m., Respondent arrived at Client's home and determined breech position. Respondent was unable to determine whether the faint pulse she auscultated was FHT or maternal pulse;

12. On September 9, 2004, at or about 12:15 a.m., Respondent and McLachlan contacted hospital staff to notify of Client transport to hospital;

13. On September 9, 2004, at or about 12:30 a.m., McLachlan transported Client to hospital in McLachlan's vehicle, with Respondent following in another vehicle;

14. On September 9, 2004, at or about 12:45 a.m., Client arrived at hospital;

15. Upon arrival at hospital, breech position was confirmed and hospital staff was unable to auscultate FHT. Ultrasound revealed intrauterine fetal demise. Client's temperature was reported at 38.4 degrees C (101.1 degrees F) and her white blood cell count was found consistent with intra-amniotic infection;

16. Some of the terms used in the administrative rules cited in this Notice are defined in OAR 332-015-0000.

### CONCLUSIONS OF LAW

17. Respondent engaged in negligence, incompetence, or departure from or failure to conform to standards of practice when Respondent failed to maintain a plan for emergency transport of Client, as evidenced by an approximate 90 minutes between auscultation of no FHT and Client transport to hospital, in violation of ORS 676.612(1)(j) and OAR 332-025-0020(12);

18. Respondent engaged in negligence, incompetence, or departure from or failure to conform to standards of practice when Respondent failed to arrange transport of Client to the hospital when absolute risk factors (*e.g.*, those described in paragraphs 9 to 11) appeared during the intrapartum period, in violation of ORS 676.612(1)(j) and OAR 332-025-0021(1)(b) and (2)(b);

19. Respondent engaged in negligence, incompetence, or departure from or failure to conform to standards of practice when Respondent failed to arrange transport or transfer of care of Client, or consult with an appropriate Oregon licensed health care provider, when non-absolute risk factors (*e.g.*, those described in paragraphs 4 to 6) appeared during the intrapartum period, in violation of ORS 676.612(1)(j) and OAR 332-025-0021(3) and (4)(b);

20. Respondent engaged in negligence, incompetence, or departure from or failure to conform to standards of practice when Respondent failed to appropriately assess or evaluate FHT during labor, in violation of ORS 676.612(1)(j) and OAR 332-025-0022(7)(a) and (7)(b);

21. Violation of ORS 687.405 to 687.495 and the administrative rules is subject to a maximum civil penalty of \$5,000 for each violation, in addition to any other penalty or remedy provided by law. See ORS 676.992.

**NOW THEREFORE**, pursuant to the authority of ORS 676.612 and 687.445, the Oregon Health Licensing Office proposes that:

22. License DEM-LD-269194 issued to Respondent shall be revoked; and

23. Respondent shall be required to pay civil penalties in the amount of \$4,000 as follows:

- a. \$1,000 for the violation described in paragraph 17;
- b. \$1,000 for the violation described in paragraph 18;
- c. \$1,000 for the violation described in paragraph 19;
- d. \$1,000 for the violation described in paragraph 20.

### **NOTICE OF RIGHT TO HEARING**

Pursuant to the Administrative Procedures Act, ORS Chapter 183, you have a right to request a hearing in this matter. A request for a hearing, along with an answer to the assertions or charges, must be submitted in writing and must be received by the Agency at the following address, during regular business hours, within 21 days of the date of this Notice:

Oregon Health Licensing Office  
700 Summer St. NE, Suite 320  
Salem, OR 97301-1287

Enclosed is a copy of OAR 331-020-0020 regarding the consequence of failure to answer the assertions or charges. If you request a hearing, you will be notified of the time and place of the hearing. The hearing will be conducted according to the contested case procedures described in ORS 183.413 to 183.470. You have the right to represent yourself at such hearing or to be represented by legal counsel. Before the commencement of the hearing you will be provided with information on procedures, right of representation, and other rights of respondents relating to the conduct of the hearing, as required by ORS 183.413(2).

In the event you fail to request a hearing, withdraw your request for a hearing, notify the Agency or the administrative law judge that you do not intend to appear for the hearing, or fail to appear for hearing on this matter, the Agency designates its file, the investigation report and accompanying documents as the evidentiary record in this matter, and may issue a Final Order on Default.

### **STATEMENT OF REASONABLE ACCOMMODATION**

All proceedings will be conducted in an accessible location. Written materials may be provided and/or graphic displays may be presented during the proceeding. For any other accommodations required due to a disability, please contact:

Yvette Tamamoto – Enforcement  
Telephone: (503) 378-8667 ext. 4314  
Facsimile: (503) 370-9216

DATED this 5<sup>th</sup> day of January, 2008

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

  
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Michael J. Tryon  
Chief Enforcement Officer  
Regulatory Operations Division

Date Mailed January 5, 2008