



**WHO:** Health Licensing Office  
Board of Direct Entry Midwifery

**WHEN:** December 2, 2015 at 9 a.m.

**WHERE:** Health Licensing Office  
Rhoades Conference Room  
700 Summer St. NE, Suite 320  
Salem, Oregon

**What is the purpose of the meeting?**

The purpose of the meeting is to conduct board business. A working lunch may be served for board members and designated staff in attendance. A copy of the agenda is printed with this notice. Please visit <http://www.oregon.gov/OHLA/DEM/Pages/meetings.aspx> for current meeting information.

**May the public attend the meeting?**

Members of the public and interested parties are invited to attend all board/council meetings. All audience members are asked to sign in on the attendance roster before the meeting. Public and interested parties' feedback will be heard during that part of the meeting.

**May the public attend a teleconference meeting?**

Members of the public and interested parties may attend a teleconference board meeting **in person** at the Health Licensing Office at 700 Summer St. NE, Suite 320, Salem, OR. All audience members are asked to sign in on the attendance roster before the meeting. Public and interested parties' feedback will be heard during that part of the meeting.

**What if the board/council enters into executive session?**

Prior to entering into executive session the board/council chairperson will announce the nature of and the authority for holding executive session, at which time all audience members are asked to leave the room with the exception of news media and designated staff. Executive session would be held according to ORS 192.660.

No final actions or final decisions will be made in executive session. The board/council will return to open session before taking any final action or making any final decisions.

**Who do I contact if I have questions or need special accommodations?**

The meeting location is accessible to persons with disabilities. A request for accommodations for persons with disabilities should be made at least 48 hours before the meeting. For questions or requests contact a board specialist at (503) 373-2049.

# **Items for Board Action**

**REVISED**

2:14 pm, Nov 30, 2015



Health Licensing Office  
Board of Direct Entry Midwifery



December 2, 2015 at 9 a.m.  
700 Summer St. NE, Suite 320  
Salem, Oregon

**Call to Order**

**1. Items for Board Action**

- ◆ Approval of agenda
- ◆ Approval of minutes - October 1, 2015

**3. Policy Report**

- ◆ Mail Tribune, Medford Oregon – Waterbirth Center Closure
- ◆ Health Evidence Review Commission – Out-of-Hospital Birth Guidance for Review

**4. Written Public Comment**

- ◆ Silke Ackerson, Oregon Midwifery Council
- ◆ Holly Scholles
- ◆ Tracey MacDonald

**5. Public/Interest Parties Feedback**

**6. Executive Session** – Pursuant to ORS 192.660(2)(f) for the purpose of considering information or records exempt from public inspection. (legal advice)

**7. Items for Board Action**

- ◆ Informal settlement conference procedure and forms

**8. Executive Session** – Pursuant to ORS 192.660(2)(f) for the purpose of considering information or records exempt from public inspection. (legal advice)

**9. Deliberate on Contested Case** - The Board will leave the public meeting under ORS 192.690(1) to deliberate on contested case. Contested case file numbers 12-7029, 10-5963, and 12-6787

**10. Items for Board Action** – Contested case file numbers 12-7029, 10-5963, and 12-6787

**11. Executive Session** – Pursuant to ORS 192.660(2)(f) for the purpose of considering information or records exempt from public inspection and confidential information pursuant to ORS 687.490. (Complaint files) 15-7950, 15-8000, 15-8001, 10-5969 and 11-6546

**12. Items for Board Action** – Complaint files 15-7950, 15-8000, 15-8001, 10-5969 and 11-6546

**13. Other Board Business**

**Agenda is subject to change.**  
**For the most up to date information visit**  
[www.oregon.gov/OHLA](http://www.oregon.gov/OHLA)

# **Approval of Agenda**

**Approval of Minutes**

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**October 1, 2015**



Health Licensing Office  
Board of Direct Entry Midwifery



October 1, 2015  
700 Summer Street NE, Suite 320  
Salem, Oregon

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**MINUTES**

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**MEMBERS PRESENT**

Colleen Forbes, chair  
Wendy Smith  
Kelli McIntosh  
Niamh Charles

**MEMBERS ABSENT**

James di Properzio  
Sarah Taylor  
Stephanie Elliott

**GUESTS PRESENT**

Julia Bailey  
Jessica Dolin  
Pamela Echeverio  
Anne Frye

**STAFF PRESENT**

Sylvie Donaldson, fiscal services and licensing manager  
Bob Bothwell, regulatory operations manager  
Samie Patnode, policy analyst  
Sarah Kelber, communications coordinator  
Trampus Schuck, investigator/ inspector  
Nathan Goldberg, investigator/ inspector  
Anne Thompson, policy analyst  
Maria Gutierrez, board specialist

**Call to Order**

Colleen Forbes called the meeting of the Board of Direct Entry Midwifery to order at 9:10 a.m. Roll was called.

Sylvie Donaldson, interim director and division manager noted the following amendments to the agenda:

- Remove item number 4, and 5 from the agenda.

**Approval of Agenda**

Kelli McIntosh made a motion with a second by Niamh Charles to approve the agenda. Motion passed unanimously.

**Approval of Minutes**

Niamh Charles made a motion with a second by Kelli McIntosh to approve the minutes for June 11, 2015, June 30, 2015, and August 14, 2015. Motion passed unanimously.

**Executive Session**

- The Board of Direct Entry Midwifery entered executive session pursuant to ORS 192-660(2)(f) at 9:14 a.m. on October 1, 2015 for the purpose of considering information or records exempt from public inspection. Records to be considered related to legal advice.
- Executive session concluded and the board reconvened regular session at 10:22 a.m. It was noted that no decisions were made and no votes were made in executive session.

**Items for Board Action:**

Members discussed the possibility of having oral arguments during the investigative process. Further discussion on informal settlement conference would continue at future meetings. Several variables would need to be determined before the process is imposed including:

- Individuals must notify the office within 45 days if they would like to provide oral argument during their investigative process.
- Individual's presentation must not exceed 30 minutes.

Members would like further direction from the office, and attorney in consideration of allowing oral argument/ presentation from individuals.

**MOTION:**

Wendy Smith made a motion with a second by Niamh Charles to not allow oral argument during the exception period. Motion passed unanimously.

Patnode, and attorney are going to work on drafting a letter that will go out to individuals with their notice of intent explaining the oral argument process.

**Executive Session:**

- The Board of Direct Entry Midwifery entered executive session pursuant to ORS 192-660(2)(f) at 11:20 a.m. on October 1, 2015 for the purpose of considering information or records exempt from public inspection. Records to be considered relate to investigative files.
- Executive session concluded and the board reconvened regular session at 2:10 p.m. it was noted that no decision were made and no votes were made in executive session.

**Items for Board Action – Investigative files:**

Donaldson and members of the board outlined the following recommendations:

In regards to investigation file 11-6611

- To closed unsubstantiated.

**MOTION:**

Wendy Smith made a motion, with a second by Kelli McIntosh. Motion passed unanimously.

In regards to investigation file 11-6616

- Individual to take a risk assessment class on hypertensive disorders of pregnancy.
- Can't supervise for 1 year.

- 6 month suspension.
- Upon the end of the 6 month suspension the individual must have their first 10 charts supervised within the supervision guidelines.

**MOTION:**

Kelly McIntosh made a motion, with a second by Wendy Smith. Motion passed unanimously.

**In regards to investigation file 14-7559**

- To close unsubstantiated.

**MOTION:**

Niamh Charles made a motion, with a second by Wendy Smith. Motion passed unanimously.

**In regards to investigation file 14-7656**

- To close unsubstantiated.

**MOTION:**

Wendy Smith made a motion, with a second by Niamh Charles. Motion passed unanimously.

**In regards to investigation file 10-5961**

- Final order upon default to be issued.

**MOTION:**

Wendy Smith made a motion, with a second by Niamh Charles. Motion passed unanimously.

**In regards to investigation file 10-6219**

- Final order upon default to be issued.

**MOTION:**

Kelly McIntosh made a motion, with a second by Niamh Charles. Motion passed unanimously.

**Approval of additional board meetings for 2015**

Wendy Smith made a motion with a second by Kelli McIntosh to add an additional meeting for 2015. Meeting date scheduled for October 22, 2015 at 9 a.m.

**2016 Meeting Dates:**

Board members considered proposed meeting dates for 2016 as follows:

February 11, 2016 at 9 a.m.

June 9, 2016 at 9 a.m.

October 6, 2016 at 9 a.m.

Additional meetings were discussed and added for investigative cases as follows:

January 7, 2016 at 9 a.m.

March 31, 2016 at 9 a.m.

April 14, 2016 at 9 a.m.  
May 12, 2016 at 9 a.m.  
July 14, 2016 at 9 a.m.  
August 11, 2016 at 9 a.m.  
September 8, 2016 at 9 a.m.  
November 10, 2016 at 9 a.m.  
December 8, 2016 at 9 a.m.

**MOTION:**

Wendy Smith made a motion with a second by Kelli McIntosh to approve 2016 meeting dates. Motion passed unanimously.

**Approval of chair and vice chair:**

Board members discussed the role of chairperson and vice chairperson and asked for nominations for 2016.

**MOTION:**

Niamh Charles made a motion with a second by Wendy Smith to elect Colleen Forbes as chair person and James di Properzio as vice chairperson. Motion passed unanimously

**Scope of practice clarification – well women care**

Patnode, informed members on past question that have been raised on whether or not well women care is within the scope of practice for a Direct Entry Midwife.

The board to consider definition of Direct Entry Midwifery within Oregon Revised Statute and definition of postpartum within the Oregon Administrative Rules and determine if well women care is within the scope of practice of a DEM.

**MOTION:**

Kelli McIntosh made a motion with a second by Niamh Charles to approve the practice clarification. Motion passed unanimously.

**Class approval for final order- case number 10-6221**

A final order of default was issued on June 11, 2015 by the Chairperson of the Board of Direct Entry Midwifery. As part of the final order the respondent was to attend and complete a board approved class related to blood loss estimation and documentation with a primary focus on informed consent.

One July 3, 2015 the respondent requested board approval for the following courses to fulfill her requirements listed under the final order for case number 10-6221 as follow:

- Advanced Life Support in Obstetrics (ALSO) course.
- Blood Loss Estimation Class given by Andaluz WaterBirth Center.

Members stated that the Advanced Life Support in Obstetrics (ALSO) course has been previously

approved.

Members request additional information pertaining to the Blood Loss Estimation Class given by Andaluz WaterBirth Center such as name of education sponsor/ provider, course agenda, and course outline.

**Director Report**

Sylvie Donaldson, interim director and division manager, reported on the following:

- Update on change of director
- Update on latest transition to Public Health
- Update on new website to come
- Update on new minutes and recording system – Granicus

**Licensing and Fiscal Statistical Reports**

Donaldson, presented an overview of statistics related to the board. Statistics include licensing statistics, license volumes and active license trends.

The statement of cash flow for the period 7/1/13- 6/30/15 was reviewed and the statement of cash flow for the period 7/1/13 – 6/30/15 was also reviewed.

**Policy Report**

Samie Patnode, policy analyst, reported on the following:

- Continuing education outreach letter mailed to all current licensee midwives.
- Update on legend drugs & devices resources for instructors
- Update on practice clarification process
- Health evidence review commission

Sarah Kelber, communications coordinator, reported on the following:

- Customer service surveys
- Revamp of the new website
- Social media to be added to the website in the near future

**Regulatory Report**

Bob Bothwell, regulatory operations manager, reported on enforcement activity including:

**2011-2013 Biennium**

Between July 1, 2011 and June 30, 2013, 28 complaints were received. Of the 28 complaints 2 remain open. A summary of allegations received by type of complainant was provided as stated below.

Mandatory Reporters	Client	Other
14	9	5

**2013-2015 Biennium**

Between July 1, 2013 and June 30, 2015, 19 complaints were received. Of the 19 complaints 15 remain open. A summary of allegations received by type of complainant was provided as stated below.

Mandatory Reporters	Client	Other
13	0	6

2015-2017 Biennium

Between July 1, 2015 and August 31, 2015, 40 complaints were received. Of the 40 complaints 40 remain open. A summary of allegations received by type of complainant was provided as stated below.

Mandatory Reporters	Client	Other
40	0	0

**Other Board Business**

There was no "Other Board Business."

The meeting adjourned at approximately 3:09 p.m.

Minutes prepared by: Maria Gutierrez, board specialist

# **Policy Report**

**Mail Tribune,  
Medford, Oregon**

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**Waterbirth Center  
Closure**

By Tammy Asnicar  
for the Mail Tribune

November 03, 2015 6:32PM

## OHP rule changes lead to closure of waterbirth center in Medford

Though the demand for midwifery services is growing, the options for women who choose planned out-of-hospital deliveries are becoming fewer — especially for those enrolled in the Oregon Health Plan.

On the last day of the busiest month in the history of Trillium Waterbirth Center in Medford, midwife-proprietor Augustine Colebrook posted a letter to her clients informing them that the doors will close Nov. 25. All current and future business, she wrote, is being diverted to the newly expanded, but much smaller Trillium Waterbirth Center in Grants Pass.

Colebrook, who once had the distinction of operating the only two free-standing birth centers between Eugene and Sacramento, said it's no longer feasible for her to run both. She cites the Oregon Health Plan's (OHP) reimbursement process and the Oregon Health Evidence Review Commission's (HERC) stringent guidelines governing midwifery as primary reasons.

"As the OHP medical review board reviews each of our OHP client's charts they have seen fit to deny payment for almost half of the women in our care," Colebrook said.

Trillium midwives have attended approximately 100 births each year since Colebrook opened Trillium in Medford in 2010 and in Grants Pass in 2013. The staff helped to deliver 17 babies at the Medford center in August — the month she announced the closure. She also will cease operating the five-year-old Wise Women Care Associates, a wellness center assisting mothers prenatal through postnatal.

Oregon has one of the highest rates nationwide of mothers giving birth outside of a hospital. The Oregon Section of the American College of Obstetrics and Gynecology reports that about 4 percent of the 42,011 live term births in Oregon in 2012 occurred outside of a hospital setting.

And, while OHP's Medicaid-funded health plan pays for more than half of all Oregon births, the majority are in-hospital births.

"The process to be eligible for Medicaid reimbursement for patients birthing out of the hospital is time-consuming for the care provider and, in my opinion, is discriminatory towards women by eliminating many women's right to choose where and with whom they have their babies," Colebrook said.

Colebrook said that approximately 55 percent of her clients qualified for Medicaid this past year.

The Oregon Health Authority requires midwives to submit extensive paperwork before getting compensated, a process that sometimes stretches through the term of the pregnancy. If a woman is declined, or must be transferred to the hospital during delivery, Trillium receives nothing for its prenatal services. Additionally, Colebrook said, the state recently stopped compensating midwives who assist the primary midwife at a delivery.

In the first six months of 2015, she said 27 clients were affected. A handful appealed their case and won, but 10 were denied coverage. Since February of this year, she has been unable to collect insurance reimbursement for seven cases. Six mothers opted to pay completely out-of-pocket for care despite qualifying for Medicaid.

"It is unfair, confusing, and even traumatizing for mothers to go through their pregnancy and births not knowing if their care will be covered, even when their chosen care provider is working well within the scope of her practice," said Jessica "Veege" Ruediger, who like Colebrook, is nationally certified and state licensed to practice midwifery.

Ruediger, who assists at home births in the southern Rogue Valley, including Ashland, Talent and Medford, added that "some of the low-income mothers I work with are facing the undue threat of altering their medical choices, being asked to accept medical interventions that they don't want and have the right to decline, or pay out-of-pocket for midwifery care even when their midwife is an OHP provider."

Colebrook said OHP reimbursement rates for midwifery care are currently half of the actual costs for services rendered and the amount allotted for facility reimbursements are one-sixth of actual costs of providing care in a birth center. Consequently, The Trillium Waterbirth Center has seen a 52 percent reduction in cash flow since before the Affordable Care Act (ACA) took effect in Oregon in late 2013.

Colebrook said that Trillium Waterbirth Center will no longer accept clients covered only by OHP/Medicare insurance.

Colebrook is not alone in losing the fight for reimbursement.

Home Sweet Home Birth Center in Lincoln City will close in the coming weeks for much the same reason. The closure leaves the Central Coast without a birth center.

Like Colebrook, the proprietor of Home Sweet Home said she could no longer absorb the losses.

Both birth centers have been unable contract with their respective Coordinated Care Organizations (CCOs), which manage OHP cases.

"We constantly have to prove we're worthy to be in-network," Colebrook said.



Augustine Colebrook, shown here by the birthing tub at Trillium Waterbirth Center, is closing the Medford center as a result of rule changes by the Oregon Health Plan. MT File Photo

Naturopathic doctor Wendy Green, who specializes in obstetrical care at Kalista Birth Sanctuary and Wellness Center in Medford, was accepted in the Jackson Care Connect network, which is managed by Care Oregon. Unlike other birthing centers with a staff of midwives, Green handles the prenatal care and the births herself.

Many private insurance companies cover out-of-hospital birth costs. Under ACA, maternity and newborn care is one of the 10 essential health benefits that must be covered in individual and small group plans, according to Dania Palanker, senior counsel at the National Women's Law Center.

Colebrook advises clients to contact their insurance provider and research to see which providers are within that plan's network.

CCOs prefer that midwives carry the same malpractice insurance as obstetricians and hospitals do.

Colebrook, however, said that malpractice insurance was cost prohibitive, routinely exceeding a midwife's annual salary. Private insurance reimbursed her for services without such a requirement. She argued that since nearly all CCOs are owned and controlled by hospitals and physician groups, they have an economic incentive to prevent women from going outside their facilities or choosing direct-entry midwives for childbirth.

Malpractice insurance does cover nurse midwives who are nurse practitioners specializing in childbirth and typically deliver at hospitals, including Providence's BirthPlace — the only accredited "Baby-Friendly" facility in Jackson County — and Asante Rogue Regional Medical Center in Medford, Asante Three Rivers Medical Center in Grants Pass (also designated as Baby-Friendly) and Asante Ashland Community Hospital.

The decision by CCOs to deny contracting with free-standing birth centers is not limited to Oregon. Lesley Rathbun, the president of the American Association of Birth Centers, wrote U.S. Health & Human Services Secretary Sylvia Burwell in July, accusing managed care organizations in Oregon and four other states of violating ACA by preventing women from care at birth centers.

The scope of Colebrook's Trillium Waterbirth Centers and Ruediger's Moonstone Midwifery are defined by their license regulations.

Only pregnancies that are deemed to be low-risk are appropriate for out-of-hospital births, but Colebrook said 91 percent of her patients delivered at her birth center. When problems arise such as a breech birth, presence of genital herpes or some other illness that could affect the infant's health, or in some cases, a history of caesarean deliveries, the woman must deliver her baby in the hospital.

However, with new standards likely to be adopted Nov. 12 when HERC convenes in Wilsonville, women planning to give birth outside of a hospital will have to meet stricter risk criteria if they want their care covered by OHP.

Dr. Catherine Livingston, associate medical director for HERC, said some women will be unnecessary classified as high risk, but she said, they are the exceptions.

"We're making policy for a population level, so this needs to be the best it can be for the vast majority," she said.

According to the Oregon Midwifery Council, the criteria covers risk conditions that midwives agree are not appropriate for home births, but it also includes conditions that are well within the scope of practice for birthing centers such as Trillium.

"Midwives are qualified to assess risk status and offer informed consent," argued Ruediger.

"Look to our recent Midwives Alliance of North America (MANA) statistics, which have a big enough sample size to be fairly compared with medical mainstream research, and you will see that midwives are practicing responsibly, saving huge amounts of money, and producing excellent outcomes."

Cynthia Pellegrini, senior vice president for public policy and government affairs at the March of Dimes, backs that up.

"Birth centers and certified nurse-midwives have a good record of safety and patient satisfaction and birth outcomes," she said.

The American Association of Birth Centers also found no evidence of risk in water births. It analyzed data from 3,998 water births that occurred between 2007 and 2010 and were part of a sample of 15,574 obstetrically low-risk women eligible for birth center delivery at the onset of labor.

Colebrook who has trained future midwives through her "Pathways to Midwifery" courses, still believes in the practice, but not the policies.

"The whole birth experience is really profound," said Colebrook. "A lot of people think of birth as just another hospital procedure, but it's actually a rite of passage in our life cycle. The way we do it here is informed both by the art and by the science."

*Reach Grants Pass freelance writer Tammy Asnicar at tammyasnicar@q.com.*

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<http://www.mailtribune.com/article/20151103/NEWS/151109857>

**Health Evidence  
Review Commission**

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**Out-of-Hospital Birth  
Coverage Guidance**

# Oregon Health Plan

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**OAR 410-141-3060 &**  
**410-141-0060**

**Birthing Center**  
**Absolute Risk Criteria**

# **Written Public Comment**

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**Silke Ackerson**

**Holly Scholles**

**Tammy MacDonald**

**From:** Silke Akerson [mailto:silkeakerson@gmail.com]  
**Sent:** Wednesday, October 07, 2015 12:30 PM  
**To:** Patnode Samie  
**Cc:** Colleen Forbes  
**Subject:** Letter about investigations for midwifery board members

Dear Members of the Board of Direct Entry Midwifery,

I am writing to follow up on a conversation that took place at the September 18, 2015 Oregon Midwifery Council statewide meeting about the investigation process.

As both board members and midwives strive to understand the investigation process it becomes clear that there is room for improvement in the process. We are thrilled to hear about the potential changes that were discussed at the October 1, 2015 Board meeting. We also want to draw your attention to another possible change that would address the concern over the lack of early and direct oversight of the process by the board members.

The Oregon Midwifery Council would like to propose a simple change in the investigative process that we think would address this concern directly. We propose that the order of steps in the investigation process be changed so that the next step after the board has reviewed a complaint and determined that an investigation should be opened would be requisition of the chart(s) for review by the board before any interviews with investigators take place. The board's direct assessment of charts would be the primary element of the investigation and would determine whether further investigation (interviews by the investigator) would be needed and give the board a chance to specifically direct the investigator as needed.

Midwives in Oregon are pleased with the concerted effort that BDEM members are putting into improving the investigation process. We all want an effective, fair, and timely investigation process and are hopeful that you will continue the good work you have started.

Thank you for your consideration,

Silke Akerson, CPM, LDM regon Midwifery Council

**From:** Holly Scholles [<mailto:holly@birthingway.edu>]

**Sent:** Thursday, October 01, 2015 9:34 AM

**To:** Patnode Samie; Stephanie Elliott; Kelli McIntosh; Sarah Taylor; [colleen@homemidwiferycare.com](mailto:colleen@homemidwiferycare.com)

**Cc:** Celeste Kersey; Silke Akerson; Silke Akerson

**Subject:** Letter to Board of Direct Entry Midwifery

To the members of the Oregon Board of Direct Entry Midwifery:

It has come to my attention that some statements made at the recent statewide meeting of the Oregon Midwifery Council (OMC) may contain some confusing information which could be relevant to the deliberations of the Board. Based on my recollection of events at the time, I would like to clarify that information.

When licensure was first legalized in 1993, the licensing Board had authority over its investigations into complaints filed against licensed midwives, reviewing charts and questioning witnesses. At that time, the Health Licensing Office (HLO) worked for the Board, providing administrative support for Board tasks. As a public entities, both the Board and HLO were required to protect confidentiality during the complaint process.

In the 1990s, a midwife (CKL) was under investigation due to a complaint filed. During the course of the investigation, two mistakes occurred: (1) an HLO employee widely disseminated confidential minutes from an Executive Session in which the Board was discussing the case, and (2) at least one Board member talked about what happened during the Executive Session with several non-Board members. In both cases, a serious violation of confidentiality occurred.

This was the primary basis of the lawsuit filed by CKL against the Board at that time. This lawsuit had serious financial repercussions for the midwifery Board, and led to a statutory increase in licensing fees to \$2000 a year in order to fund the nearly bankrupt licensing program. However, it had no direct impact on how investigations were handled by the Board.

Those changes came about as a result of the transformation of the HLO into the Oregon Health Licensing Agency (OHLA), which happened later. The new agency created rules for investigating complaints which it applied across all boards under its jurisdiction. The new process gave much more authority to the agency, and resulted in a system in which the Board was merely advisory, rather than decision making. It also pulled the tasks of reviewing records and interviewing of witnesses away from Board members, instead utilizing staff for those tasks. The Board merely listened to staff recommendations instead of directly analyzing the evidence for themselves.

Recent legislative changes have restructured the Oregon Health Authority, including restoring the title of the agency to Health Licensing Office. Statute also restored some Board autonomy, including power over investigations. It remains to be seen how much the investigative process will return to the former system of active Board involvement.

Please let me know if there is any additional information I can provide to support the Board and its work.

Respectfully, *Holly Scholles, CPM, LDM, MA*

**From:** Tracy MacDonald [<mailto:tracyRmacdonald@yahoo.com>]

**Sent:** Thursday, October 01, 2015 12:48 PM

**To:** Donaldson Sylvie

**Subject:** For the Board's consideration

To Whom It May Concern:

As a former midwifery student and apprentice, and a homebirth client, I am writing to the Board today to address two concerns.

First, it has come to my attention that the Board is currently reviewing the issue of home VBAC. I want to state my belief that it's essential for women to continue, through informed consent, to choose homebirth after a previous cesarean. We cannot afford to allow our rights as women and as mothers to be slowly chipped away.

After giving birth via cesarean in the hospital, six weeks early, the ability to birth my other two children at home, under the care of skilled midwives, was profoundly healing for me and for my family. I cannot imagine having that option revoked. I hope that the Board will stand in support of a mother's right to choose where, how, and with whom she will give birth, and also to support midwives' rights to legally attend home VBACs.

Second, I am concerned that the current review process does not allow midwives to speak directly to the Board on their own behalf when addressing complaints and charges filed against them. Although the investigators handling these complaints are allegedly impartial, their language and tactics often betray a bias against homebirth and homebirth midwives. And as you are aware, the hospital system itself is biased against homebirth. Thus, it is essential that midwives have the opportunity to explain their charting, their motives, and other circumstances that might not be apparent otherwise. Allowing midwives the opportunity to directly address the Board would provide a more complete picture of the circumstances, and therefore, would likely lead to a more fair and just decision.

Historically, the Board has stood for and behind a woman's right to choose homebirth, even under circumstances labeled "risky" by the Western medical model. The Board has also stood behind midwives, and their right to practice the midwifery model of care via homebirth.

I hope the Board will consider my concern regarding the review process for complaints filed against midwives, as well as continuing to support home VBACs. These choices benefit both birthing mothers and the midwives who support and serve them. The Board's support in these matters would remain in line with the Board's mission to support of the midwifery model of care.

Sincerely,

Tracy MacDonald

Former Birthingway student and apprentice midwife, Doula, and VBAC mother of two healthy beautiful children

Sent from my iPhone

# **Public/Interested Parties Feedback**

# **Executive Session**

**ORS 192.660(2)(f) for the purpose  
of considering records exempt from  
public inspection**

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## **Legal Advice**

# **Items for Board Action**

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**Informal settlement  
conference procedure  
and forms**

DEAR \_\_\_\_\_:

The Board of Direct Entry Midwifery (Board) has issued you a Notice of Intent to \_\_\_\_\_, a copy of which is enclosed, along with a Notice of Contested Case Rights and Procedures. The Notice of Intent and the Notice of Contested Case Rights and Procedures describe your rights, how to request a hearing in this matter, and procedural details about any hearing that may be held.

In addition to requesting a hearing, you may also attend an informal conference with the Board. The informal conference is an opportunity to discuss settling the matter prior to a hearing.

Respondents are entitled to a hearing to appeal the Board's decision, as provided by the Administrative Procedures Act (Oregon Revised Statutes, Chapter 183). The request for hearing must be made in writing to the Board office within 30 calendar days of the date of this letter. In addition and pursuant to Oregon Administrative Rule (OAR) 331-020-0020, a written request for a hearing must include an answer admitting or denying each factual matter alleged in the Notice of Intent, together with a short, plain statement of each relevant affirmative defense.

Your options are provided on the enclosed options form. Regarding those options, please note:

- ✓ If you request a hearing, you will be notified of the time and place of the hearing by the Office of Administrative Hearings.
- ✓ If no hearing is requested by you within the 30-day period, your request for hearing is withdrawn, or the party requesting the hearing fails to appear at the scheduled hearing, the Board may issue a final order by default. If the Board issues a final order by default, it designates its file on the matter as the record.
- ✓ If you request an informal conference, HLO will inform you of the date and time for you to appear for your settlement conference. Requesting an informal conference does not mean that you have requested a hearing. Nor does requesting an informal conference delay the time in which you must request a hearing. You must request a hearing in addition to requesting an informal conference, if you intend to request a hearing.

Please contact our office if you have any questions or concerns.

Sincerely,

[Bob or Investigator?



# HEALTH LICENSING OFFICE

700 Summer St. NE, Suite 320, Salem, OR, 97301

Phone: 503-378-8667 | Fax: 503-370-9004

[www.oregon.gov/oha/hlo](http://www.oregon.gov/oha/hlo) | Email: [hlo.info@state.or.us](mailto:hlo.info@state.or.us)

## REQUEST FOR A FORMAL HEARING-DEM CASES

**I am requesting a formal hearing and an informal settlement conference with the Board.**

I request a hearing in order to preserve the right to a hearing, but **I would like to attempt to resolve this matter through an informal conference with the Board.** My response, in accordance with Oregon Administrative Rule (OAR) 331-020-0020 is attached.

**I am NOT requesting a formal hearing**

**I understand that after 30 days the enclosed order will become final.** I understand that payment of a civil penalty, if applicable, will be due 71 days after the order becomes final on appeal or by operation of law.

**I am requesting a formal hearing**

My response, in accordance with Oregon Administrative Rule (OAR) 331-020-0020 is attached. I do not wish to have an informal settlement conference with the Board. I understand that I will next hear from the Office of Administrative Hearings regarding the scheduling of a hearing.

NAME (PLEASE PRINT):		FILE NUMBER:	
PHYSICAL RESIDENCE ADDRESS: <input type="checkbox"/> CHECK HERE IF CHANGING OR CORRECTING ADDRESS			
CITY:	STATE:	ZIP:	
MAILING ADDRESS: (If Different Than Above) <input type="checkbox"/> CHECK HERE IF CHANGING OR CORRECTING ADDRESS			
CITY:	STATE:	ZIP:	
BUSINESS ADDRESS: <input type="checkbox"/> CHECK HERE IF CHANGING OR CORRECTING ADDRESS			
CITY:	STATE:	ZIP:	
PHONE: <input type="checkbox"/> HOME <input type="checkbox"/> CELL	BUSINESS PHONE:	EMAIL ADDRESS:	
SIGNATURE:			DATE:

# OREGON ADMINISTRATIVE RULE 331-020-0020

## Hearing Requests and Answers; Consequences of Failure to Answer

- (1) A hearing request, and answer when required, shall be made in writing to the Agency by the party or the party's attorney.
- (2) An answer shall be made in writing to the Agency with any request for a hearing on a matter related to violations alleged under ORS 675.360 to 675.410, 687.405 to 687.495, 688.808 to 688.840, the rules adopted thereunder, or violations alleged under 676.612 when related to the practice of direct entry midwifery, sex offender treatment, respiratory care or polysomnography. The answer shall include the following:
  - (a) An admission or denial of each factual matter alleged in the notice; and
  - (b) A short, concise statement of each relevant affirmative defense the party may have.
- (3) When an answer is required:
  - (a) Factual matters alleged in the notice and not denied in the answer shall be presumed admitted;
  - (b) Failure to raise a particular defense in the answer will be considered a waiver of such defense;
  - (c) New matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency; and
  - (d) Evidence shall not be taken on any issue not raised in the notice and the answer.
- (4) When an answer is required, the party or party's attorney may amend the response and answer, but no later than 10 days before the scheduled contested case hearing.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2012(Temp), f. & cert. ef. 3-1-12 thru 8-27-12; HLA 9-2012, f. 5-10-12, cert. ef. 5-15-12

### Informal Conference Script

This settlement proceeding is an informal conference and will be recorded. We are in a confidential executive session. We ask that you honor that confidentiality regardless of what happens today.

An informal conference is meant to be just that, informal. The Board's desired outcome is to reach a mutually agreeable settlement and to have you sign an agreement today, if needed. No settlement offer is final until the Board votes and approves, in public session, any settlement agreement reached.

Before proceeding, did you receive a copy of the Notice of Intent (NOI)? Have you read the allegations presented in the NOI?

Do you understand the violations and proposed sanctions? If you do, you will now be given the floor to present any relevant information pertaining to only the allegations in the NOI and then discuss settlement options with the Board. You are not to discuss policy issues or anything not related to settlement of the alleged conduct in the NOI.

# **Executive Session**

**ORS 192.660(2)(f) for the purpose  
of considering records exempt from  
public inspection**

~

## **Legal Advice**

# **Non-Public Session**

**Pursuant to ORS 192.690(1) for the  
purpose of deliberation on contested  
cases.**

~

**Contested case file numbers**

**12-7029**

**10-5963**

**12-6787**

# **Items for Board Action**

~

## **Contested Case Files**

**12-7029**

**10-5963**

**12-6787**

# **Executive Session**

**ORS 192.660(2)(f) for the purpose  
of considering records exempt from  
public inspection and confidential  
information pursuant to ORS  
687.490.**

~

## **Complaint Files**

**15-7950**

**15-8000**

**15-8001**

**10-5969**

**11-6546**

# **Items for Board Action**

~

## **Complaint Files**

**15-7950**

**15-8000**

**15-8001**

**10-5963**

**11-6546**

# **Other Board Business**