

2 **BEFORE THE**
4 **BOARD OF DIRECT ENTRY MIDWIFERY**
6 **HEALTH LICENSING OFFICE**

8 *In the Matter of:*) **Notice of Intent to Assess Civil Penalty**
8 *Augustine Colebrook*) **and Right to Request a Hearing**
10 *License No.*)
10 *DEM-LD-10119128*)
12 *Respondent,*) **Office File No. 14-7701**

14 Under ORS 687.420, 687.445, and 687.485, the Board of Direct Entry Midwifery (“Board”), with
16 the assistance of and in consultation with the Health Licensing Office¹ is the State board charged with
18 licensing and disciplining licensed direct entry midwives. Pursuant to ORS 687.445, 676.612(1), and
676.992(2), the Board, hereby proposes to:

- 20 1) Assess a civil penalty against Respondent in the amount of \$250; and
21 2) Assess the cost of any disciplinary proceeding against the Respondent, up to a maximum of \$5,000.

22 **FINDINGS OF FACT**

- 24 1) The Health Licensing Office issued Augustine Colebrook (“Respondent”) Direct Entry Midwifery
license DEM-LD-10119128 on August 8, 2007.
- 26 2) **On April 7, 2014**, Client had her first prenatal visit with Colebrook. It is written in the notes Client
also registered for care as a Client.
- 28 3) **On April 16, 2014**, Respondent was sent a “Notification of Administrative Investigation and Request
30 for Records” for case #13-7233.
- 32 3.1. The “Notification of Administrative Investigation and Request for Records” was sent via certified
mail.
- 34 3.2. The “Notification of Administrative Investigation and Request for Records” was delivered on
April 21, 2014.
- 36 4) **On August 31, 2014**, Colebrook’s Direct Entry Midwifery License DEM-LD-10119128 became
inactive.
- 38 5) **Between August 31, 2014 and October 11, 2014**, Client had six prenatal visits with Respondent:
40 September 1, 2014, September 9, 2014, September 22, 2014, October 6, 2014, October 10, 2014, and
October 11, 2014.

¹ As of July 1, 2014, the “Oregon Health Licensing Agency” (OHLA or Agency) became the “Health Licensing Office” (HLO or Office).

- 2 5.1. During those visits Colebrook was a rendering provider, attending provider, or both.
3 5.2. During those visits, Gestational age, fetal position and fetal heart tones were documented.

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5 6) **On November 4, 2014 at about 6:30 pm**, Client arrived at the Trillium Waterbirth Center.
6 Respondent conducted a non-stress test on the client. Fetal heart tones dropped from the 130 beats
7 per minute to 60 to 70 beats per minute. Fetal heart tones did not return to baseline and stayed low
8 for ten minutes.
- 9 7) **On November 4, 2014, between 6:30 pm and 7:30 pm**, Respondent transported Client to the
10 Providence Medford Medical Center.
- 11 8) **On November 4, 2014**, while at Providence Medford Medical Center, Respondent performed a
12 vaginal exam on client and felt the baby's head, caught the baby as it was delivered, evaluated client's
13 baby for APGAR scoring, and assisted client with breastfeeding.
- 14 9) Following the birth, and prior to renewing her Direct Entry Midwifery license, Respondent continued
15 to provide care to Client and Client's baby, including, during postpartum visits, Respondent palpated
16 Client's abdomen and administered medication to Client's baby.
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20 10) **On November 28, 2014**, Respondent renewed her Direct Entry Midwifery License.

21 **APPLICABLE LAW**

22
23 **ORS 676.205 Continuing jurisdiction of boards; effect of expiration, lapse, surrender, suspension
24 or revocation of license.**

25 (1) As used in this section:

26 (a) "Health professional regulatory board" means the agencies listed in ORS 676.160 and the Health
27 Licensing Office created in ORS 676.575.

28 (b) "License" means a license, registration, certification or other authorization to engage in a profession.

29 (2) A health professional regulatory board continues to have jurisdiction for licensing, regulatory and
30 disciplinary purposes related to acts and omissions that occur while a person is licensed or required to be
31 licensed, regardless of any changes in the licensing status of the person.

32 (3) A person who obtains, but is not required to obtain, a license to engage in a profession regulated by a
33 health professional regulatory board, and whose license expires, lapses or is voluntarily surrendered while
34 the person is under investigation by the board, or whose license is suspended or revoked, may not engage
35 in that profession unless the person again obtains a license from the relevant health professional regulatory
36 board to engage in the profession.

37 (4) Nothing in this section limits the jurisdictional, investigatory or other authority otherwise provided by
38 law to a health professional regulatory board.

39 **ORS 687.580 Definitions for ORS 676.575 to 676.625.** As used in ORS 676.575 to 676.625:

40 (1) "Active authorization" means an authorization that is current and not suspended.

2 (2) "Authorization" means a certificate, license, permit or registration issued by the Health Licensing
4 Office that allows a person to practice one of the occupations or professions or maintain a facility subject
to the authority of the boards and councils listed in ORS 676.583.

(3) "Expired authorization" means an authorization that has been not current for more than three years.

6 (4) "Inactive authorization" means an authorization that has been not current for three years or less.

8 **ORS 676.583 Oversight and centralized service by office.** Pursuant to ORS 676.586, the Health
Licensing Office shall provide administrative and regulatory oversight and centralized services for the
10 following boards and councils:

* * *

12 (4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;

14 **ORS 676.612 Disciplinary authority; authority of office to require fingerprints.**

(1) Subject to ORS 676.616 and 687.445, and in the manner prescribed in ORS chapter 183 for contested
16 cases and as specified in ORS 675.385, 676.805, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167,
690.407, 691.477, 694.147 and 700.111, the Health Licensing Office may refuse to issue or renew, may
18 suspend or revoke or may otherwise condition or limit an authorization or may discipline or place on
probation an authorization holder for commission of the prohibited acts listed in subsection (2) of this
20 section.

(2) A person subject to the authority of a board or council listed in ORS 676.583 commits a prohibited act
22 if the person engages in:

24 (m) Violation of a statute regulating an occupation or profession subject to the authority of the boards and
councils listed in ORS 676.583.

26 **ORS 687.405 "Direct entry midwifery" defined.** As used in ORS 687.405 to 687.495, "direct entry
28 midwifery" means providing the following services for compensation:

- (1) Supervision of the conduct of labor and childbirth;
- 30 (2) Providing advice to a parent as to the progress of childbirth;
- (3) Rendering prenatal, intrapartum and postpartum care; and
- 32 (4) Making newborn assessments.

34 **ORS 687.415 Practice of direct entry midwifery without license prohibited; exceptions; rules.**

(1) Except as provided in subsection (2) of this section, a person may not practice direct entry midwifery
36 in this state unless the person holds a license to practice direct entry midwifery under ORS 687.405 to
687.495.

38 (2) A person may practice direct entry midwifery in this state without a license to practice direct entry
midwifery if:

- 40 (a) The person is a licensed health care practitioner and the services described in ORS 687.405 are
within the scope of the person's license; or
- 42 (b)(A) The person is acting as a traditional midwife and does not use legend drugs or devices, the use of
which requires a license under the laws of this state;
- 44 (B) The person does not advertise that the person is a midwife; and

2 (C) The person discloses to each client on a form adopted by the State Board of Direct Entry Midwifery
by rule:

- 4 (i) That the person does not possess a professional license issued by the state;
- 6 (ii) That the person's education and qualification have not been reviewed by the state;
- 8 (iii) That the person is not authorized to carry and administer potentially life saving medications;
- 10 (iv) That the risk of harm or death to a mother or newborn may increase as a result of the information
described in sub-subparagraphs (i) and (ii) of this subparagraph;
- 12 (v) A plan for transporting the client to the nearest hospital, as defined in ORS 442.015, if a problem
arises during labor or childbirth;
- 14 (vi) That the client will not have recourse through a complaint process; and
- 16 (vii) The types of midwives who are licensed by the state.

(3) If supervised by a person licensed to practice direct entry midwifery, a student midwife, birth
assistant or other individual may assist the direct entry midwife in the provision of services described in
ORS 687.405.

(4) A license to practice direct entry midwifery under ORS 687.405 to 687.495 is required for purposes
of reimbursement under medical assistance programs.

18 **Note:** Section 14(2), chapter 657, Oregon Laws 2013, provides:

20 **Sec. 14.** (2) Notwithstanding the amendments to ORS 687.415 by section 1 of this 2013 Act, a person
who is not licensed to practice direct entry midwifery under ORS 687.405 to 687.495 may continue to
practice direct entry midwifery until January 1, 2015.

CONCLUSIONS OF LAW

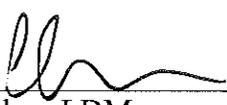
- 24 1. By engaging in the practice of midwifery between August 31, 2014 and November 28, 2014 while
26 having a lapsed, or inactive, license and being under investigation by the Board of direct entry
midwifery, Augustine Colebrook violated ORS 676.205(3).
- 28 2. Augustine Colebrook Violated 676.612(2)(m) by violating ORS 676.205(3), a statute regulating
30 the direct entry midwifery profession.

PROPOSED ORDER

32 **Pursuant to ORS 687.445, 676.612(1) 676.992(1)(L) and (2), the Board of Direct Entry Midwifery**
34 **may take any disciplinary action it finds proper and hereby proposes to ORDER:**

- 36 1) Assess a civil penalty against Respondent in the amount of \$250; and
- 38 2) Assess the cost of any disciplinary proceeding against the Respondent, up to a maximum of \$5,000.

2 DATED 7-14-16

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6 Colleen Forbes, LDM
8 Chair, Board of Direct Entry Midwifery

10 Enclosures: Option form, Notice of Contested Case Rights and Procedures
12 CERTIFIED MAIL: 7015 1730 0000 9939 1418

14 NOTICE OF RIGHTS TO REQUEST A HEARING

16 You have the right to a hearing to contest this order. The hearing, if requested, will be conducted
18 according to the Administrative Procedures Act, ORS chapter 183. A **request for hearing** must be in
20 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.

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

32 If you are an active duty service member you have the right to request a stay of proceedings under the
34 federal Servicemembers Civil Relief Act and may contact the Oregon State Bar toll-free at (800) 452-
36 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>.

38 You will be notified of the date, time and place of the hearing. If you request a hearing you may
40 be represented by an attorney at hearing and you may subpoena and cross-examine witnesses. If you
42 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.

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