FINAL ORDER

JUN 11 2013

BEFORE THE OREGON HEALTH LICENSING AGENCY
BOARD OF DIRECT ENTRY MIDWIFERY

In the Matter of: **Patricia Couch,** *License No. DEM-LD-101 28833* Respondent,	))))))	**Notice of Intent to Assess a Civil Penalty and Impose Additional Discipline Right to Request a Hearing and Final Order upon Default** Agency File No. 10-6095

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

1) **Require the Respondent to attend the Advanced Life Support in Obstetrics (ALSO) within 6 months of the issuance of a final order or of this Notice becoming final by default.**

2) **Require Respondent to submit for review complete client charts for 10 (ten) pregnancies and corresponding labors and births to a licensed direct entry midwife selected and approved by the Board within 12 months of the issuance of a final order or of this Notice becoming final by default. Respondent being responsible for any fees or costs associated with such chart review.**

3) **Assess a civil penalty against Respondent in the amount of $1,000.**

4) **Assess the cost of any disciplinary proceeding against Respondent, up to a maximum of $5,000.**

FINDINGS OF FACT

1) At all relevant times, Patricia Couch (Respondent) held Direct Entry Midwifery license DEM-LD-10128833 issued by the OHLA.

2) At all relevant times, Respondent was a direct entry midwife at the Bella Vie Gentle Birth Center, LLC (Bella Vie) Salem, Oregon.

3) At all relevant times, Respondent was the Bella Vie midwife responsible for primary care of the client; explaining the general practices of the birth center, including which staff might be present for the birth, the client's records and post partum care.

4) There was no emergency transport plan in Client's file.

5) On or about March 25, 2010, at approximately 9:05 a.m. Client arrived at Bella Vie for labor and birth.

6) On or about March 26, 2010, at approximately 12:53 a.m., the Client gave birth. While giving birth, the Client was diagnosed by Respondent with a second degree tear of her perineum, which the Respondent repaired. During the birth, a Nurse Midwife gave orders for an IV and antibiotics to be given to Client. Neither were provided.

7) The Client remained at Bella Vie for post partum care and the Client was released from Bella Vie on March 28, 2010, without being seen by the Respondent during that time. At discharge, Client was having feeding difficulties with the baby and her perineum remained very swollen and sore.

8) Respondent had no contact with Client until 3 ½ days after discharge from Bella Vie. At the time, Client called Respondent and reported fever, vaginal soreness and strong odor. Respondent referred her to a Nurse Midwife for a phone consultation. Client began antibiotics but her condition continued to worsen so the next day Respondent then recommended, over the phone, that the Client go to the Emergency Room. During this time, Respondent did not see Client in person.

9) Under these circumstances, it was negligent for Respondent to have failed to visit Client, in person, within the 24 to 36 hours postpartum and to have failed to have visited, in person, with client within 3 to 4 days after the Client's discharge from Bella Vie. Under these circumstances, it was negligent for Respondent to fail to monitor the perineum and healing process, including conducting an immediate physical assessment when Client called Respondent with complaints of fever, vaginal soreness and odor.

APPLICABLE LAW

1) ***Former* OAR 332-025-0020(3), (12) (2004):** (3) A general explanation of the midwife's emergency transport plan shall be included in the client disclosure form to be given to the client. It shall include but not be limited to destination of transport; mode of transport; and provision for delivery equipment to be carried in the vehicle.

(12) Licensees shall maintain a plan for emergency transport and must discuss the plan with client. The plan must include but not be limited to:

a) Place of transport;
b) Mode of transport;
c) Provisions for physician support and hospital including location and telephone numbers; and
d) Availability of private vehicle or ambulance including emergency delivery equipment carried in the vehicle.

2) ***Former* OAR 332-025-0022(8)(d) (2004):** Follow up: Postpartum follow-up care must minimally include: visits during the first 24 to 36 hours following birth, at 3 to 4 days to assess mother and baby, and a visit or telephone consultation within one to two weeks post birth. The primary caregiver must continue to monitor appropriate vital signs, and physical and social parameters including advocacy of support systems and signs of infection. Information must be provided regarding lactation, postpartum exercise, and community resources available. Education may be provided on various family-planning methods. Those midwives who are qualified to fit barrier methods of Cox section may do so at the six week check up.

3) **ORS 676.612(2)(j):** A person subject to the authority of a board, council or program listed in ORS 676.606 commits a prohibited act if the person engages in * * * [u]nprofessional conduct, negligence, incompetence, repeated violations or any departure from or failure to conform to standards of practice in performing services or practicing in a regulated occupation or profession subject to the authority of the boards, councils and programs listed under ORS 676.606.

CONCLUSIONS OF LAW

1) By failing to provide and maintain a written emergency transport plan, Respondent violated *former* OAR 332-025-0020(3),(12) (2004).
2) By failing to visit with the client during the first 24 to 36 hours following birth, Respondent violated *former* OAR 332-025-0022(8)(d).
3) By failing to visit with the client during the first 24 to 36 hours following birth, Respondent was negligent in violation of ORS 676.612(2)(j).
4) By failing to assess mother and baby at 3 to 4 days following birth, Respondent violated *former* OAR 332-025-0022(8)(d).
5) By failing to assess mother and baby at 3 to 4 days following birth, Respondent was negligent in violation of ORS 676.612(2)(j).
6) By failing to monitor appropriate vital signs, and physical * * * parameters and signs of infection, Respondent violated *former* OAR 332-025-0022(8)(d).
7) By failing to monitor appropriate vital signs, and physical * * * parameters and signs of infection, Respondent was negligent in violation of ORS 676.612(2)(j).

ORDER

Pursuant to ORS 676.992(1), the Agency may impose a maximum civil penalty of $5,000 per violation. Pursuant to ORS 676.612(1) and ORS 676.992(2), the Agency may take any disciplinary action it finds proper, including revocation of Respondent's license, for any violation.

Pursuant to ORS 676.992(1)(d) and (m) and OAR 332-030-0000, the Oregon Health Licensing Agency, in consultation with the Board of Direct Entry Midwives, finds and hereby ORDERS:

1) Respondent is assessed a civil penalty of $1,000.

2) Respondent is required to successfully complete Advanced Life Support in Obstetrics (ALSO) at the Respondent's own expense and present to the Board a certificate of completion or other acceptable documentation submitted to the Board, within six months of the date a final order is issued in this case or this notice becomes final by default. Additionally the Respondent is required to have 10 chart reviews within twelve months of the date a final order is issued in this case or this notice becomes final by default, performed by a reviewer who is selected and approved by the Board.

4) Additionally and in accordance with ORS 676.992(2), for these violations the Respondent is also assessed the costs of any disciplinary proceeding up to a maximum of $5,000.00.

DATED 5/9/2013

R Bothwell

Robert Bothwell, Manager
OHLA Regulatory Operations Division
For Holly Mercer, Interim Director

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NOTICE OF RIGHT TO HEARING

Licensee is entitled to a hearing as provided by the Administrative Procedures Act, Oregon Revised Statutes, and Chapter 183. If Licensee wishes to receive a hearing Licensee must file a written request for a hearing with the Board no later than 30 days from the date of service of this notice. If a request for hearing is not received within the 30 day period Licensee's right to a hearing shall be considered waived unless the failure to request a hearing was beyond Licensee's reasonable control. If Licensee requests a hearing, Licensee must also provide with the request an answer to each factual matter alleged in the notice and a short, plain statement of any affirmative defense Licensee will raise at the hearing pursuant to OAR 331-020-0010 and 331-020-0020. Except for good cause: factual matters alleged in the notice and not denied in the answer shall be deemed 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. Hearing requests shall be mailed to Oregon Health Licensing Agency, 700 Summer St. NE, Suite 320, Salem, Oregon 97301-1287. Licensee has the right to be represented by legal counsel. ORS 183.457 provides a corporation may be represented by an authorized representative at the hearing. If Licensee requests a hearing the Licensee will be notified of the time and place of the hearing. Information on the procedures,

right of representation and other rights of parties relating to the conduct of the hearing is attached to this citation.

NOTICE OF FINAL ORDER

If Licensee does not request a hearing within 30 days, this citation will become a final order, effective 31 days after it was served on Licensee. If Licensee does not request a hearing or fails to appear at a scheduled hearing, the Agency's file on the matter becomes record for the purpose of establishing a prima facie case. Licensee is entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 30 days from the date this order becomes final, pursuant to the provisions of ORS 183.482.

SENT VIA CERTIFIED MAIL #: 7012 1640 0000 6066 1624