

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

4 *In the Matter of:* ) **Notice of Intent to Suspend License Assess a**  
6 **Dana Shibley** ) **Civil Penalty and Impose Additional Discipline**  
 ) **Right to Request a Hearing**  
8 *License No.* )  
9 *DEM-LD-1004924* )  
10 )  
11 Respondent, ) Agency File No. 10-5961  
12

13 Notice of Proposed Action

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

- 20 1) Suspend Direct Entry Midwifery License # DEM-LD-1004924 license for one year and  
21 completion of all other required conditions for licensure, including completion of the  
22 board approved classes described below.
- 24 2) Require the Respondent to attend and complete a board approved class related to the  
25 identification of risks and management of pregnancy. Respondent is responsible for finding  
26 the class and is responsible for any fees or costs associated with the class. The Respondent  
27 must submit proof of successful completion of the class in order for the suspension to be  
28 lifted after the one year period.
- 30 3) Require the Respondent to attend and complete a board approved class related to fetal  
31 assessment. Respondent is responsible for finding the class and is responsible for any fees  
32 or costs associated with the class. The Respondent must submit proof of successful  
33 completion of the class in order for the suspension to be lifted after the one year period.
- 34 4) Assess the costs of any disciplinary proceeding against Respondent not to exceed \$5000.  
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37 **FINDINGS OF FACT**

- 40 1) At all relevant times, Dana Shibley (Respondent) held Direct Entry Midwifery license  
41 DEM-LD-1004924 issued by the OHLA.
- 42 2) At all relevant times, the Respondent was the primary midwife for the client.
- 44 3) Client began her prenatal care with the Respondent at Andaluz Water Birth Center on April  
45 30, 2009.
- 48 4) Respondent did not conduct one of the following tests at the 41 week mark of Client's  
49 Pregnancy: (1) Non-stress test or accelerated auscultation test or (2) a Biophysical profile.  
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- 2 5) Client, at 41 5/7 weeks into her pregnancy, was given a biophysical profile test at Epic  
4 Imaging on December 22, 2009. Her score was eight out of eight. Her amniotic fluid index  
6 was six. The next testing was not scheduled until December 28, 2009, at 42 4/7 weeks.
- 8 6) Client, at 42 4/7 weeks into her pregnancy, was given a biophysical profile test at Epic  
10 Imaging on December 28, 2009. Her score was four out of eight. Her amniotic fluid index  
12 was one. The Respondent did not plan for an in hospital birth for Client after seeing the test results.
- 14 7) Client arrived Andaluz Water Birth Center on December 29, 2009, at around 8:10 AM.
- 16 8) Client reported she had been awake for 48 hours straight and was delirious, exhausted and  
18 in extreme pain. Respondent told Client to rest for her exhaustion. Client was unable to rest  
20 or sleep. In combination with dehydration and inadequate labor progress, this was an  
22 unacceptable amount of time.
- 24 9) On December 30, 2009, at about 2:06 a.m. Client is catheterized, and produced one quarter  
26 cup of urine. Respondent did not provide adequate hydration for Client nor transport Client  
28 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
- 30 10) On arrival at the Birth Center, fetal heart tones were assessed during and after contractions  
32 and reported to be in the 144-168 range. At 9:30 PM, with the client at 9 cm, the fetal heart  
34 tones were documented to be 108-120 during contractions. At 6:26 AM, the fetal heart  
36 tones were documented to be 130 -150, but not clear as to timing with contractions. On  
38 arrival at the hospital, the heart tones were documented to be baseline of 120 with late  
decelerations and an emergency cesarean section was performed.
- 40 11) On December 30, 2009, at about 9:27 AM, Client was transported to Legacy Emanuel  
42 Hospital.

#### APPLICABLE LAW

##### **OAR 332-025-0021 Risk Assessment Criteria**

44 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:

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

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

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

18 \*\*\*

20 (2) The following constitute absolute risk factors:

22 (a) ANTEPARTUM ABSOLUTE RISK CRITERIA: \*\*\*; persistent severe  
24 abnormal quantity of amniotic fluid; \*\*\* pregnancy lasting longer than 42 weeks  
26 (14 days past the due date) with an abnormal non-stress test; any pregnancy with  
28 abnormal fetal surveillance tests; \*\*\*

30 (b) INTRAPARTUM ABSOLUTE RISK CRITERIA: \*\*\*; evidence of fetal  
32 distress or abnormal fetal heart rate pattern unresponsive to treatment or inability  
34 to auscultate fetal heart tones; excessive vomiting, dehydration, acidosis or  
36 exhaustion unresponsive to treatment; \*\*\*.

38 (3) "Non-absolute" risk as defined in OAR 332-015-0000(36)(b). Clients who present one  
40 or more non-absolute risk factor are at increased obstetric or neonatal risk. When one or  
42 more non-absolute risk factor presents, the midwife must either arrange for the transport or  
44 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.

2 (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.

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6 (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,  
8 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  
10 must document the reasons justifying acting contrary to the provider's  
recommendations and obtain informed client consent.

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12 4) The following are non-absolute risk factors:

14 \*\*\*

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

18 **OAR 332-025-0022**

20 **Standards of Care**

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

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

28 (b) Biophysical profile weekly.

30 **CONCLUSIONS OF LAW**

- 32
- 34 1. By failing to transfer care of Client when presented with an antepartum absolute risk of  
OAR 332-025-0021(2)(a),\* pregnancy lasting longer than 42 weeks (14 days past the due  
36 date) with an abnormal non-stress test, The Respondent violated OAR 332-025-  
0021(1)(a)\*.
  - 38 2. By failing to transfer care of Client when presented with an antepartum absolute risk of  
OAR 332-025-0021(2)(a),\* any pregnancy with abnormal fetal surveillance tests, the  
40 Respondent violated OAR 332-025-0021(1)(a)\*.
  - 42 3. By failing to transfer care of Client when presented with an antepartum absolute risk of  
OAR 332-025-0021(2)(a),\* persistent severe abnormal quantity of amniotic fluid, the  
44 Respondent violated OAR 332-025-0021(1)(a)\*.

- 2 4. By failing to transfer care of Client when presented with an intrapartum absolute risk of  
4 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)\*.
- 6 5. By failing to transfer care of Client when presented with an intrapartum absolute risk of  
8 OAR 332-025-0021(2)(b)\*\*\*, dehydration, \*\*\* the Respondent violated OAR 332-025-  
0021(1)(b)\*.
- 10 6. By failing to transfer care of Client or failed to consult with an Oregon licensed health care  
12 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  
14 OAR 332-025-0021(3)(d)\*.
- 16 7. By failing to meet the standards of care by not conducting one of the following tests at the  
18 41-week mark of Client's pregnancy: (a) Non-stress test or accelerated auscultation test  
every three to four days or (b) Biophysical profile weekly, the Respondent violated OAR  
332-025-0022(4)\*.

20 \*Oregon administrative Rules, April 1, 2009 Edition.

### 22 PROPOSED ORDER

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

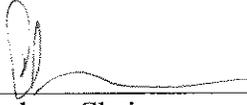
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- 32 2) Require the Respondent to attend and complete a board approved class related to the  
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4 assessment. Respondent is responsible for finding the class and is responsible for any fees  
6 or costs associated with the class. The Respondent must submit proof of successful  
8 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.

10 DATED 12-11-14

12   
14 Colleen Forbes, Chair  
Board of Direct Entry Midwifery

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18 NOTICE OF RIGHTS TO REQUEST A HEARING

20 You have the right to a hearing to contest this order. The hearing, if requested, will be  
22 conducted according to the Administrative Procedures Act, ORS chapter 183. A **request for  
24 hearing** must be in writing and **must be received** by the Oregon Health Licensing Agency  
26 **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.

28 If you request a hearing, you **may be required to provide, with your request, an  
30 answer** to each factual matter alleged in the Notice and a short and plain statement of any  
32 **affirmative defense** you will raise at the hearing. Please see OAR 331-020-0020. If a specific  
34 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.

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38 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  
40 United States Armed Forces Legal Assistance (AFLA) locator at  
<http://www.militaryonesouce.mil>.

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44 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  
46 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,  
48 right of representation and other rights relating to the conduct of the hearing before the  
commencement of the hearing.

50 If you do not file a timely request for a hearing, the Agency's file may be made part of  
52 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.

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**SENT VIA CERTIFIED MAIL #:** 7010309000067464845

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