

2 5) On or about January 4, 2007, at approximately 1:45 p.m., Client arrived at Andaluz
in spontaneous labor. She began active labor and continued pushing with contractions to the
4 point of exhaustion at approximately 12:20 a.m. on January 5, 2007 when she took a rest.

6 6) Client resumed pushing, still exhausted, and at approximately 2:05 a.m. on January
5, 2007, experienced rectal bleeding and a "bulging" from her anus.

8 7) At approximately 3:49 a.m. on January 5, 2007, the baby's head was crowning at 3
10 centimeters.

12 8) At approximately 4:34 a.m. on January 5, 2007, Client's primary midwife discussed
performing an episiotomy, and did so. Client's primary midwife delivered Client's baby at
14 approximately 5:05 a.m. on January 5, 2007, with another Andaluz midwife.

16 9) At approximately 5:40 a.m. on January 5, 2007, Client's primary midwife assessed
Client as having a 2nd degree perineal laceration.

18 10) At approximately 6:00 a.m. Client's primary midwife called Respondent in to
20 Andaluz because the primary midwife was tired. Respondent arrived at Andaluz at
approximately 7:00 a.m. Client's primary midwife departed from Andaluz.

22 11) Respondent also assessed the Client as having a 2nd degree laceration.

24 12) Respondent performed the repair of Client's tear, did not record the time at which
26 she began the repair or how long the repair took, but reported that she believed it was done
between 9:30 and 10:30 a.m. on January 5, 2007.

28 13) Respondent believed that the tear was straightforward without jagged edges, except
30 for where the tissue was swollen, and reported using interrupted sutures on the perineum because
of the swelling.

32 14) Interrupted stitches are non-standard for perineal repair.

34 15) No one at Andaluz, including Respondent, recommended that Client - or asked
36 Client if she wished to - transfer to hospital for repair of her laceration.

38 16) Within weeks after the birth of Client's baby, Client began to experience urinary
and fecal incontinence, but did not report her incontinence to Respondent or other Andaluz
40 midwives at that time.

42 17) On or about January 22, 2007, Client's primary physician evaluated Client's
episiotomy repair, because of Client's concern that it was asymmetrical and exposed. Client's
44 primary physician determined that the episiotomy was "at least" a 3rd degree laceration and that

2 the repair was very asymmetrical, but did note good sphincter tone at that time. Client's primary
physician then referred her to an obstetrician.

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18) On or about January 24, 2007, an obstetrician examined Client's episiotomy repair
6 and found that the left bulbocavernosus muscle at the perineum protruded beyond the perineal
skin on the right, approximately 1 to 1.5 centimeters along the entire course of the episiotomy,
8 and found that there was a significant recess along Client's vaginal wall just inside the stitch line.

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19) On or about March 7, 2007, the same obstetrician again examined Client's
episiotomy repair and found that the Client's perineum had healed back together on its own, but
12 that a band of firm scar tissue had developed across the perineum at the vaginal orifice,
significantly decreasing the vaginal opening. By this time, the obstetrician also noted that Client
14 now had poor rectal tone, and that neither voluntary nor reflexive contractions of the sphincter
could be elicited.

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20) On or about March 19, 2010, Client entered Andaluz in labor with her second full-
18 term pregnancy. The primary midwife at Client's second Andaluz birth was required to cut into
the scar tissue that had formed from Respondent's earlier laceration repair, and then cut into
20 additional scar tissue which had formed from that repair, in order to free "Rt to Lt labia." A
midline episiotomy was then cut. Eventual blood loss resulting from the lacerations was
22 estimated at 1750 cc.

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21) Subsequent to Client's second birth on or about March 19, 2010, a third physician
examined the scar tissue from Client's original episiotomy performed by Respondent; the third
26 physician was repairing the lacerations from Client's second delivery at that time. With regard to
the scar from Client's first episiotomy, this third physician clearly documents it having been a 3rd
28 degree tear, as the third physician observed scar tissue from the previously torn sphincter already
imbedded in Client's tissues.

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22) Any interruption in the anal sphincter constitutes a 3rd degree tear, and can interfere
32 with subsequent bowel function.

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23) Respondent allowed her direct entry midwifery license to lapse in October of 2008;
it is now expired.

36 38 APPLICABLE LAW

40 1) *Former OAR 332-025-0021 (2004)*: Licensees 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 [absolute risks
42 and non-absolute risks] * * * *.

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2 5) By improperly identifying Client's perineal tear as a 2nd degree laceration when it was
3 a 3rd degree laceration which compromised Client's anal sphincter, and, based upon the
4 knowledge and skill of the attending midwives, required hospital repair, and by performing a
5 sub-standard repair that contributed to incontinence in Client and also contributed to serious
6 injury of Client in a subsequent labor and birth, Respondent engaged in conduct detrimental to
7 the Client, thereby engaging in negligence and violating ORS 676.612(2)(j) on a third occasion.

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9 6) By failing to note the time, description of laceration and details of the repair she
10 performed on the Client's perineum, Respondent failed to maintain accurate written client
11 records documenting the course of midwifery care, thereby violating *former* OAR 332-025-
12 0021(13) (2004).

14 **ORDER**

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

19 Pursuant to ORS 676.992(1)(d) and (m) and OAR 332-030-0000, the Oregon Health Licensing
20 Agency, in consultation with the Board of Direct Entry Midwives, finds and hereby ORDERS:
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22 1) Respondent violated *former* OAR 332-025-0021 (2004) [absolute risk assessment] and is
23 assessed a penalty of \$1,000.

24 2) Respondent violated *former* OAR 332-025-0021(1)(d) (2004) [immediate transport and
25 transfer with postpartum absolute risk] and is assessed a penalty of \$1,000.

26 3) Respondent violated *former* OAR 332-025-0020(13) (2004) and in accordance with ORS
27 676.992(1)(d) and (4) is assessed a civil penalty of \$250.

28 Total Civil Penalties are \$2250.

29 5) Respondent violated ORS 676.612(2)(j) by engaging in incompetence on two occasions;

30 6) Respondent violated ORS 676.612(2)(j) by engaging in negligence on one occasion; and

31 7) For these three violations of ORS 676.612(2)(j) and in accordance with ORS 676.612(1) and
32 676.992(2), Respondent's license DEM-LD-1001281 is hereby suspended for 6 (six) months
33 from the date a final order is issued or this notice becomes final upon default.

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

6 DATED 6/27/2012
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10 R. Bothwell
12 Robert Bothwell, Manager
14 OHLA Regulatory Operations Division
16 For Randall Everitt, Director

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20 **NOTICE OF RIGHT TO HEARING**

22 *Licensee is entitled to a hearing as provided by the Administrative Procedures Act, Oregon*
24 *Revised Statutes, and Chapter 183. If Licensee wishes to receive a hearing Licensee must file a*
26 *written request for a hearing with the Board no later than 30 days from the date of service of this*
28 *notice. If a request for hearing is not postmarked within the 30 day period Licensee's right to a*
30 *hearing shall be considered waived unless the request is received within 60 days of the issuance*
32 *of a final order by default AND the failure to timely request a hearing was for good cause. If*
34 *Licensee requests a hearing, Licensee must also provide with the request an answer to each*
36 *factual matter alleged in the notice and a short, plain statement of any affirmative defense*
38 *Licensee will raise at the hearing pursuant to OAR 331-020-0010 and 331-020-0020. Except for*
40 *good cause: factual matters alleged in the notice and not denied in the answer shall be deemed*
42 *admitted; failure to raise a particular defense in the answer will be considered a waiver of such*
44 *defense; new matters alleged in the answer (affirmative defenses) shall be presumed to be denied*
46 *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. If Licensee cannot afford counsel, Licensee may attempt to secure free or low-cost
representation through an Oregon legal aid organization. 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.

42 **NOTICE OF FINAL ORDER**

44 *If Licensee does not request a hearing within 30 days, this citation will become a final order,*
46 *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

2 *of establishing a prima facie case. Licensee is entitled to judicial review of this order. Judicial*
4 *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.

6 | SENT VIA CERTIFIED MAIL #: 75110470000300568545

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