BEFORE THE HEALTH LICENSING OFFICE
BOARD OF DIRECT ENTRY MIDWIFERY

In the Matter of:	)	**Notice of Intent to Revoke License and**
Nicole Tucker,	)	**Assess a Civil Penalty**
	)	**Right to Request a Hearing**
License No.	)	
DEM-LD-1001282	)	
	)	
Respondent,	)	Office File No. 12-6787

Notice of Proposed Action

Under ORS 676.606, 676.607, 687.445, 687.485, 676.992(1)(d),(m),(2),(4), and OAR 332-030-0000, the Board of Direct Entry Midwifery (Board), in consultation with the Health Licensing Office (Office)[1], is charged with regulating and disciplining licensed direct entry midwives. The Board hereby proposes to:

1) **Revoke Respondent's license to practice direct entry midwifery, license DEM-LD-1001282.**

2) **Assess a civil penalty against the Respondent in the amount of $5,000.**

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

FINDINGS OF FACT

1) At all relevant times, Respondent held Oregon Direct Entry Midwifery license DEM-LD-1001282 issued by the Office.

2) At all relevant times, Respondent was one of two midwives responsible for the primary care of the client including the client's records, and prenatal care.

3) In September of 2009, 12 weeks into her pregnancy, the client began her prenatal care with an OBGYN. The client had two blood pressure readings recorded in those records: 122/62 on 9/28/2009 at 12 weeks; and 128/98 on 10/26/2009 at 16 weeks. The reading 128/98 was circled in the records. The Respondent obtained those records and placed them in her client's records.

[1] The Health Licensing Office was formerly Oregon Health Licensing Agency.

4) In November of 2009, the client transferred her prenatal care to the Respondent's birth center at 19 weeks into her pregnancy. The Respondent recorded no absolute or non-absolute risk criteria.

5) According to the client's prenatal record in the "Pregnancy history" section of her registration form under "other medications" the client indicated "HTCZ, 1st month." HTCZ is hydrochlorothiazide, which is used alone or together with other medicines to treat high blood pressure (hypertension), fluid retention (edema) that is caused by congestive heart failure, severe liver disease (cirrhosis), kidney disease, or treatment with a steroid or hormone medicine.

5.1. Respondent did not address the HTCZ with the client and there is no indication in Respondent's records that anyone at the birth center followed up with the client with regards to the HTCZ.

5.2. Respondent did not obtain the records from the prescribing physician of the HTCZ.

6) On or about February 16, 2010, at week 29, at a prenatal visit the client had a blood pressure reading of 143/99.

7) After week 34, between March 2, 2010, and April 2, 2010, at seven consecutive prenatal visits, the client's blood pressure were greater than 140 systolic, or 90 diastolic and in some cases both: 138/90, 140/88, 145/100, 140/100, 130/100, 140/100, and 138/92.

8) Beginning about week 36 the respondent had the client monitoring her blood pressure at home and reporting those numbers via email. 17 of those 21 home blood pressures were greater than 140 systolic, or 90 diastolic and in some cases both. Those readings were as follows:

8.1. March 17, 2010: 125/96, 131/10;
8.2. March 18, 2010: 143/100, 124/97, 129/93, 126/89, 124/97;
8.3. March 19, 2010: 128/99, 132/102;
8.4. March 20, 2010: 130/89; 3/22/2010, 121/88, 127/98;
8.5. March 23, 2010: 129/100, 137/97;
8.6. March 24, 2010: 127/97;
8.7. March 25, 2010: 125/97;
8.8. March 27, 2010: 145/80;
8.9. March 28, 2010: 144/99, 135/97; and
8.10. March 29, 2010: 132/98, 122/98.

9) On or about April 5, 2010 at 4:25 a.m., the client arrived at birthing center with spontaneous onset of labor at approximately 41-3/7 weeks. Respondent was not present at the birth center, the other primary midwife and a student midwife attended the client's birth.

///

//

10) The client gave birth to baby boy at 7:46 a.m. at the birth center. Baby Boy was born APGAR 2 at birth with no respiratory effort, DEM A cut the cord and began PPV using a bag valve mask, and oxygen, 911 was called within a minute of birth. Baby Boy was transported by ambulance to St Charles Medical Center in Bend for of his failure to make respiratory effort. Baby boy was later diagnosed with cerebral palsy.

11) Respondent does not carry of malpractice insurance. Respondent's midwife disclosure statement that was provided to the client failed to contain a disclosure of that lack of malpractice insurance.

APPLICABLE LAW

Pursuant to **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 unprofessional 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.

Pursuant to **ORS 687.480:** Practice standards
The State Board of Direct Entry Midwifery shall develop practice standards that shall include but not be limited to:
(1) Maintenance of records of care, including client charts;
(2) Participation in peer review;
(3) Development of a written plan for emergency transport;
(4) Guidelines for equipment; and
(5) Maintenance of patient disclosure forms, which includes information regarding whether the midwife has malpractice insurance.

Pursuant to *former* **OAR 332-015-0040** *(cert. ef. 7-1-04)*: Education
(1) All applicants must have completed the following minimum core competencies adapted from the 1997 Edition of the Midwives Alliance of North America (MANA) and approved by the Board:
(b) Care During Pregnancy (Antepartum): The midwife provides health care, support and information to women throughout pregnancy. The midwife determines the need for consultation or referral as appropriate. The midwife uses a foundation of knowledge and/or skill which includes the following:
(C) Preexisting conditions in a woman's health history, which are likely to influence her well-being when she becomes pregnant.

Pursuant to *former* **OAR 332-025-0020(11)(h)** *(cert. ef. 7-1-04)*: Licensees shall maintain a midwife disclosure statement providing current and accurate information to prospective clients and must provide clients with this information. This statement must include but not be limited to malpractice coverage.

Pursuant to *former* **OAR 332-025-0021(2)(a)** *(cert. ef. 7-1-04)*: Risk Assessment Criteria
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:

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

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

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

(c) When absolute risk factors appear when the birth is imminent the midwife must take the health and condition of the mother and baby into consideration in determining whether to proceed with out-of-hospital birth or arranging for transportation to a hospital;

(d) When absolute risk factors appear postpartum, the midwife must immediately arrange for transportation to a hospital;

(e) When absolute risk factors appear in the infant, the midwife must immediately arrange for transportation to a hospital.

(2) The following constitute absolute risk factors:

(a) Antepartum absolute risk criteria: * * * essential chronic hypertension over 140/90.

Pursuant to *former* **OAR 332-025-0022** *(cert. ef. 7-1-04):* Standards of care for the determination of initial visits, laboratory tests, prenatal visits, education/counseling/anticipatory guidance, emergency access, intrapartum care, postpartum care, and newborn care include:

(3) PRENATAL VISITS: The following schedule of prenatal visits is recommended: every four weeks for the first 32 weeks, every two to three weeks until 36 weeks, and weekly thereafter. Each visit must include the interval history and physical examination, including blood pressure, weight, fundal height, fetal presentation, fetal heart rate, evaluation of urine for protein and glucose with a dipstick, and the mother's assessment of fetal activity. The midwife shall assess the breasts for nursing. The midwife must continuously evaluate the pregnancy for risks taking into consideration information derived from physical examination, laboratory tests, maternal complaints, documented history, and the overall physical and emotional well being of the mother.

The family must be kept informed of these risks. A home visit must be conducted before labor and include assessment of the birthing environment including telephone access.

CONCLUSIONS OF LAW

1) By failing to disclose her lack of malpractice insurance in her midwife disclosure statement that she provided to the client, Respondent violated ORS 687.480(5) and OAR 332-025-0020(11)(h).

2) By failing to properly assess and recognize the absolute risk factor of Essential Chronic Hypertension above 140/90, Respondent violated *former* OAR 332-025-0021(2)(a)(cert. ef. 7-1-04) and 676.612(2)(j).

3) By failing to determine the need for consultation or referral when the client was on a medication often used as a high blood pressure medication, had at least one high blood pressure reading pre-20 weeks into the pregnancy on the client's records from form her previous provider, and increasing blood pressure readings in later pregnancy, Respondent violated *former* OAR 332-015-0040(1)(b)(C) and OAR 332-025-0022 (3) (cert. ef. 7-1-04).

4) By failing to plan for an in-hospital birth with a the absolute risk factor of Essential Chronic Hypertension above 140/90, Respondent violated *former* OAR 332-025-0021(1)(a), OAR 332-025-0022 (3) (cert. ef. 7-1-04) and 676.612(2)(j).

PROPOSED ORDER

The Board hereby proposes to:

1) Revoke Respondent's license to practice direct entry midwifery, license DEM-LD-1001282.

2) Assess a civil penalty against the Respondent in the amount of $5,000.

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

DATED 10/2/2014

Vice-chair, for

Collen Forbes, LDM
President, Board of Direct Entry Midwifery

Enclosures: Option form, Notice of Contested Case Rights and Procedures
CERTIFIED MAIL: 7012 3460 0003 1130 6887

////
///
//
/

NOTICE OF RIGHTS TO REQUEST A HEARING

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

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

If you are an active duty service member you have the right to request a stay of proceedings under the federal Service members 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 United States Armed Forces Legal Assistance (AFLA) locator at http://www.militaryonesource.mil or http://legalassistance.law.af.mil.

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