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BEFORE THE
OREGON HEALTH LICENSING AGENCY
BOARD OF DIRECT ENTRY MIDWIFERY

In the Matter of :	Agency Case No. 09-5591 OAH Case No. 901264
Jacqueline E. Rowan, Licensee	SETTLEMENT AGREEMENT AND CONSENT ORDER

The Oregon Health Licensing Agency (Agency) and Board of Direct Entry Midwifery (Board) are the state agency and board responsible for licensing, regulating and disciplining direct entry licensed midwives in the State of Oregon.

Jacqueline E. Rowan, LDM (Licensee) is a licensed direct entry midwife currently practicing in and around Williams, Oregon, and is subject to the jurisdiction of the Agency and the Board.

The Agency and Board issued an Emergency License Suspension Order and Notice of Opportunity for Hearing (Emergency Order) on July 22, 2009. Also on July 22, 2009, the Board issued a Notice of Suspension and Proposed Discipline and Right to a Hearing (Notice), which proposed to suspend Licensee's license to practice midwifery in Oregon for one year, reinstatement conditioned upon completion of continuing education in the areas of informed consent, management of malpresentation, chart documentation, and sensitivity training; and which proposed the discipline of requiring that Licensee be subject to monthly chart review by the Board, for a time to be determined by the Board Chair. The Notice and Emergency Order are incorporated into this Consent Order by reference. The complaint and investigation arose from an infant death following an attempted home birth, lengthy transport, and emergency cesarean section.

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1 On August 20, 2009, Licensee timely requested a hearing on both the Emergency Order
2 and Notice. However, no hearing as yet been held on these matters and this Settlement
3 Agreement and Consent Order is the final resolution of these proceedings, waiving the right to
4 any hearing, appeal, or judicial review.

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SETTLEMENT AGREEMENT

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The Agency, Board, and Licensee agree to resolve these matters informally on the
following terms:

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1. The Agency and Board find, although the Licensee denies, the following findings
10 of fact and conclusions of law:

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(a) Licensee violated OAR 332-025-0021(3)(c),(d) by failing to document the
12 ultrasound findings of client A.H. or appropriately advise client A.H. regarding the
13 ultrasound findings and risks associated with them.

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(b) Licensee violated OAR 332-025-0022(4) at the 41st week of client A.H.'s
15 pregnancy, by failing to document a complete biophysical assessment at that time,
16 thereby failing to properly document the required monitoring a prolonged pregnancy at
17 41 weeks.

18

(c) Licensee violated midwifery practice standards under OAR 332-025-0020 by
19 engaging in the conduct above.

20

2. The Agency and Board find that a one year suspension of Licensee's License
21 DEM-LD-10118762 is an appropriate remedy for the foregoing violations. The parties stipulate
22 to termination of the order of emergency suspension while maintaining suspension of License
23 DEM-LD-10118762 for a period of approximately one year from the commencement date of the
24 emergency suspension, subject to the terms of this Consent Order.

25

3. Licensee agrees that the Board and Agency do not waive the right to sanction her
26 for any violations that have occurred prior to execution of this Consent Order, which are not

1 resolved by this Consent Order. Further, Licensee agrees that the Board and Agency may
2 consider the violations resolved by this Consent Order in determining any appropriate sanctions
3 for violations of ORS Chapter 687.405 through 495 and 687.895 through 991, 676.605 through
4 625, and 676.992, or OAR Chapter 331, Divisions 001-030 and Chapter 332, Divisions 015-030
5 that occurred prior or subsequent to the execution of this Consent Order by the Licensee.

6 4. Licensee waives all rights to a contested case hearing, judicial review or any
7 appeal in this matter.

8 5. The Board and Agency acknowledge that this Consent Order resolves all issues
9 alleged in the Emergency Order and Notice and that they will take no further disciplinary action
10 based upon any of the facts alleged in the Emergency Order and Notice.

11 6. The parties acknowledge that this Consent Order is a public document.

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CONSENT ORDER

14 The Agency and Board issue the following final order:

15 7. The EMERGENCY SUSPENSION of Licensee's license to practice midwifery,
16 DEM-LD-10118762 is HEREBY TERMINATED.

17 8. SUSPENSION of Licensee's license to practice midwifery DEM-LD-10118762 is
18 HEREBY ORDERED until July 1, 2010, for a total suspension period of one year. Licensee's
19 automatic reinstatement of license to practice midwifery DEM-LD-10118762 on July 1, 2010 is
20 subject to the terms of listed below in paragraphs 8.1 through 8.3. Subsequent to reinstatement,
21 the renewal date of Licensee's license, if reinstatement occurs on July 1, 2010, shall be July 1
22 annually with appropriate pro-ration of fees for the initial term after reinstatement, and shall
23 remain July 1 annually unless Agency or Board statutes or rules prescribe alternate renewal
24 terms or dates. If Licensee commits any violation of ORS Chapter 687.405 through 495 and

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1 687.895 through 991, 676.605 through 625, and 676.992, or OAR Chapter 331, Divisions 001-
2 030 and Chapter 332, Divisions 015-030, or a term of this Settlement Agreement and Consent
3 Order during the suspension, the Agency and Board may extend the suspension of Licensee's
4 license without providing Licensee the opportunity for hearing or appeal on the merits of
5 extended suspension as a disciplinary action. If Licensee commits any violation of ORS Chapter
6 687.405 through 495 and 687.895 through 991, 676.605 through 625, and 676.992, or OAR
7 Chapter 331, Divisions 001-030 and Chapter 332, Divisions 015-030, or a term of this
8 Settlement Agreement and Consent Order during the suspension, or if Licensee fails to comply
9 with the chart submission and review terms of this Settlement Agreement and Consent Order
10 upon and after reinstatement, the Agency and Board may proceed with revocation of Licensee's
11 license.

12 (8.1) Before July 1, 2010, Licensee shall attend and submit to the Agency satisfactory
13 proof of attendance and successful completion of the hours of continuing education as
14 provided in Licensee's "Birthingway College of Midwifery Proposed Education Plan
15 for Jae Rowan," including remedial education in the areas of malpresentation, chart
16 documentation, sensitivity training, informed consent, breech presentation, and face,
17 brow, transverse, and compound breech, submitted May 20, 2010, labeled R-H1 through
18 R-H5, and incorporated herein, as Addendum A.

19 (8.2) These remedial hours are in addition to the hours required of all licensed
20 midwives for license renewal.

21 (8.3) Upon reinstatement of her license, Licensee shall submit copies of all client charts
22 to the Agency for review by Board Chair Melissa Cheney or, in the event Ms. Cheney is
23 no longer serving on the Board, another board member selected by the Board or Agency

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1 who is a licensed direct entry midwife, on a monthly basis, for one year, that year to commence
2 the day of Licensee's reinstatement.

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4 IT IS SO ORDERED this 12 day of July 2010.

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OREGON HEALTH LICENSING AGENCY
BOARD OF DIRECT ENTRY MIDWIVES

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Randy Everitt, Director

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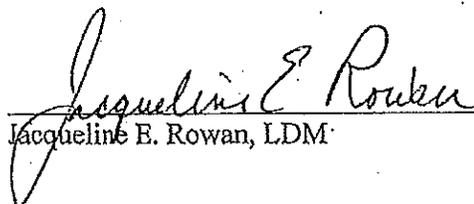
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13 IT IS SO STIPULATED.

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Jacqueline E. Rowan, LDM

6/16/2010
Date

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Approved as to form:

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Kim E. Hoyt
Garrett Hemann Robertson, P.C.
Attorneys for Licensee

6/30/10
Date

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ADDENDUM A

BIRTHINGWAY COLLEGE OF MIDWIFERY
PROPOSED EDUCATION PLAN for Jae Rowan

Requirement: 8 hours on Malpresentation.

Plan: 3 hours: Preparatory readings (see attached bibliography)

4 hours: Homework

1 hour: Meeting with instructor to review work

7 hours: Attending 2 class sessions on 5/8 and 5/13/10. After attending these sessions, student will be able to:

Describe 3 variations on "lie" – transverse, oblique, longitudinal

Describe 3 variations in "presentation" – cephalic, breech, shoulder

Describe 5 variations of the breech – frank, complete, kneeling, footling, incomplete

Describe 4 variations of the cephalic presentation – vertex, military, brow, face

Explain how "malpresentation" is diagnosed

Describe special pregnancy management of the breech

Define "external version" and explain how it is performed:

a) in a medical setting

b) in a midwifery setting

List 12 techniques for turning a breech to a cephalic presentation

List risks and complications associated with breech labor and delivery

Describe the Breech Scoring Index and how it is used

Describe fetal mechanisms (rotations, etc) in

a) breech birth

b) face birth

c) brow birth

Describe how to manage labor and delivery of

a) breech presenting baby (with variations)

b) face presenting baby

c) brow presenting baby

d) compound presenting baby

Describe techniques for handling, in a breech birth, the following situations:

a) extended arm

b) nuchal hand

c) extended head which fails to deliver

Describe normal newborn appearance and behavior after

a) breech delivery

b) face delivery

c) brow delivery

Describe special techniques and management for

a) oblique lie

b) shoulder presentation

Explain any risks and problems associated with these presentations

Demonstrate how to practice informed choice with clients experiencing these presentations

Using pelvis and doll, demonstrate correct technique for assisting delivery of:

a) breech, including with extended arms

- b) face
- c) brow
- d) shoulder
- e) compound presentation

TOTAL HOURS: 15

Requirement: 8 hours on Chart Documentation

Plan: 3 hours: Preparatory reading

2 hours: Attending 1 class session on 5/12/10. After attending these sessions, the student will be able to:

Discuss the purpose of charting:

- Establish a baseline
- Increase communication between care providers
- Providing prompts for care giving
- Record of what's been said and done, as a memory aid
- Provide a more complete picture of the situations
- Provide a record for future providers
- Remind provider of woman's choices and plans
- Provide women with details of their care
- Documentation: "if it's not charted, it didn't happen"
- Protection if legal action is taken

Explain the "rules" for correct charting

Discuss challenges of charting in emergent situations

Explain the importance of reviewing and approving chart entries

Explain the relationship between charting and legal concerns

Demonstrate application of charting rules in a classroom exercise

Explain the use of fill-in-the-blank forms versus open format charting

Explain SOAP charting

Demonstrate charting with awareness of OAR requirements for care

3 hours: Chart review using OAR Checklist tool.

1 hour: Meeting with instructor to review work

TOTAL HOURS: 9

Requirement: 8 hours of Sensitivity Training

Plan: 8 hours: Attending two class sessions on Non-Violent Communication (NVC) on 4/16/10 and 4/23/10.

2 hours: Reading six chapters from text Non-Violent Communication by M. Rosenberg

Student will be able to:

Explain how NVC supports the work of midwifery

Identify communication practices which enhance or diminish relationship with the client
Observe her own communication style and identify its effect on her midwifery practice.
Demonstrate the use of empathy and its role in effective communication with self and
with clients

Differentiate a feeling from a judgment.

Discuss the importance and purpose of healthy communication in the midwifery setting,
and what hinders successful communication

Role-play the use of empathy and compassion in midwifery situations.

Discuss the ways in which brain structure and chemistry impact on practice of NVC

TOTAL HOURS: 10

Requirement: 8 hours on Informed Consent

Plan: 2 hours: Preliminary readings.

6 hours: Writing, and discussing with instructor, the following

a) Informed Choice for Breech Birth Out-of-Hospital

b) Informed Choice for External Version Out-of-Hospital

c) Protocol for Transfer of Care including provision of informed consent in
emergent situations

1 hour: Meeting with instructor to review work

Student will be able to:

Define informed consent

Explain the requisite components of informed consent

General statement of procedure or treatment

Alternative procedures or methods of treatment, if any

Risks, if any, to the procedure or treatment

Query as to if more information is desired

Explain in which situations a patient can claim injury as a result of failure to obtain
the patient's informed consent

Discuss the differences between informed consent and informed choice.

Demonstrate the ability to craft written informed choice forms which meet the legal
requirements for informed consent

Discuss how to chart informed consent when not using topic specific forms

TOTAL HOURS: 9

GRAND TOTAL ALL HOURS IN REMEDIATION: 43

5/6/2010

CLASS 5: BREECH PRESENTATION

GRUENBERG, 225-235
CUNNINGHAM, 410-411, 565-586
HOLISTIC I, 801-811, 812-818
HOLISTIC II, 182-242, 933-971
VARNEY 4th ed, 892-898

Hanretty KP. Failure to progress in labor/diagnosis of malpresentation. In Hanretty KP. *Obstetrics Illustrated* 6th ed. New York, NY: Churchill Livingstone; 2003: 257-260.

Hanretty KP. Breech presentation. In Hanretty KP. *Obstetrics Illustrated*. 6th ed. New York, NY: Churchill Livingstone; 2003: 269-279.

Coham JS. Turning breech babies after 34 weeks: the if, how, and when of turning breech babies. *Midwifery Today*. 2007; 37: 18-19.

Ben-Meir A., Elram T, Tsafrir A, Elchalal U, Ezra Y. The incidence of spontaneous version after failed external cephalic version. *Amer J Obstet Gynecol*. 2007; 196(12): 157-158.

Vas J, Aranda JM, Nishishinya B, Mendez C et al. Correction of nonvertex presentation with moxibustion: a systematic review and metaanalysis. *Amer J Obstet Gynecol* September 2009; 241-259.

Manyande A, Grabowska C. Factors affecting the success of moxibustion in the management of breech presentation as a preliminary treatment to external cephalic version. *Midwifery*. 2004; 25: 774-780.

Lewis R. External version: home or hospital. *Midwifery Today*. 1992; 22: 16.

Runes VV. Limping home. *The Birthkit*. Winter 2003; 40:1,10.

El Halta V. Normalizing the breech delivery. *Midwifery Today*. 1996; 38:22-24, 41.

Hedrick YL. The undiagnosed breech. *Birth Gazette*. 1998; 14(1):23-24.

Hutton EK, Reitsma AH. A comprehensive review of the research literature on external cephalic version (ECV). *Canadian J MW Research & Practice*. 2008; 7(1): 4-16.

Cryns YL. What am I doing here? *Midwifery Today*. 1992; 22: 19.

Rogers C. Breech homebirth. *Midwifery Today*. 1992; 22: 20, 45.

Stevenson J. More thoughts on breech. *Midwifery Today*. 1993; 26:24-25.

Gaskin IM. Three surprise breeches. *Midwifery Today*. Summer 2005; 24-25.

Wagner V. Footling Breech: a midwife's own birth story. *Midwifery Today*. 2007; 37: 10-13.

Hannah ME, Hannah WJ, Hewson SA, Hodnett ED, Saigal S, Willan AR. Planned caesarean section versus planned vaginal birth for breech presentation at term: a randomized multicentre trial. *Lancet*. 2000; 356(9239): 1375-1384.

Keirse M.J.N.C. Evidence-based childbirth: only for breech babies? *Birth*. 2002; 29(1):55-59.

Glezerman M. Five years to the term breech trial: the rise and fall of a randomized controlled study. *Amer J Obstet Gynecol*. 2006; 194:20-25.

Garza M Beware of breech babies. *OB-Gyn Malprac Prev*. 2001; 8(5):33-37.

Brill J. Effective alternative treatments for breech presentation. *Midwifery Today*. Winter 2003; 38,39.

Morningstar S. Instinctual breech birth. *Midwifery Today – International Midwife*. Winter 2003; 54,56.

Banks M. Breech, posterior and a deflexed head. An active birth solution? *Midwifery Today*. Autumn 2009; 22-24.

5/13/2010

Class 6: BREECH (continued),FACE, BROW, TRANSVERSE,COMPOUND

GRUENBERG, 218-220, 224.

CUNNINGHAM, 410-413, 506-511

HOLISTIC II, 121-179, 929-932, 972-975, 1076-1077

VARNEY 4th ed, 890-892

Hanretty KP. Face Presentation. In Hanretty KP. *Obstetrics Illustrated*. 6th ed. New York, NY: Churchill Livingstone: 2003; 266-267

Jonquil SG. Sky high baby. *Midwifery Today*, Autumn 2000; 33.

Liebling S. The fetus frightening room. *Midwifery Today*. 1996; 39:29.

Naffziger A. A surprise posterior brow birth. *Midwifery Today*. Winter 2008; 38-39.

IN-CLASS VIDEO: Normalizing the Breech Birth (El Halta and Baldwin)

Assisting a Vaginal Breech Birth (Gaskin)

A Breech Birth and Shoulder Dystocia (Gaskin)