

**Oregon Health Licensing Office
Board of Direct Entry Midwifery
Minutes of April 10, 2006**

MEMBERS PRESENT

Betty Griffith, Chairperson
Holly Scholles, Vice Chairperson
Rosemary Carvalho, Licensed Direct Entry Midwife (LDEM)
Sherry Dress, LDM
Nancy Grant M.D.
Michele Bouche, Certified Nurse Midwife (CNM)

MEMBERS ABSENT

Sue Morningstar, CNM

STAFF PRESENT

Susan Wilson, Director
Larry Peck, Regulatory Operations Manager
Samantha Patnode, Board Liaison/Executive Assistant

AUDIENCE MEMBERS

Lisa Lehrer, LDM
Jennifer Gallardo, LDM
Susan Moray, LDM
Jessica Doline, LDM
Kristen Leonard
Kate Holloway
Anne Frye
Celeste Kersey

SPECIAL GUESTS

Warren Foote, Assistant Attorney General (AAG)
David Allen, Assistant Attorney General (AAG)

CALL TO ORDER

Chairperson, Betty Griffith, called the meeting of the Board of Direct Entry Midwifery to order at 9:21 a.m. on Monday, April 10, 2006 at the Oregon Health Licensing Agency (OHLA) Rhoades Conference Room, 700 Summer St NE, Salem, Oregon.

APPROVAL OF AGENDA

MOTION

Ms. Scholles made a motion and Dr. Grant seconded to approve the agenda. The motion passed with Ms. Dress, Ms. Scholles, Ms. Griffith, Dr. Grant, Ms. Carvalho, Ms. Bouche, and Ms. Morningstar voting aye.

Presentation by Warren Foot, Senior AAG

Mr. Warren Foote, Senior AAG, Department of Justice (DOJ), presented an overview for the Board on "*Conflict of Interest / Rules of Executive Session & Recusals for the board*". He provided members supplemental materials covering the presentation. Mr. Foote addressed Government Standards and Practices for Board Members, referencing the Oregon Administrative Procedures Act (APA), Oregon Attorney General's Administrative Law Manual and ORS 244.010 – 244.400. The presentation centered on defining the role of public officials; rules governing Executive Session; declaration of a conflict of interest; remedies when a conflict occurs; court actions; and the role of OHLA and assigned legal counsel. [A copy of the report has been appended for reference]

"Recusals"

Mr. Foote discussed "Recusal" at length and answered questions. Ms. Griffith asked when a board member has personal knowledge of pertinent information regarding a case and noticed that evidence was missing,

could she request that evidence be submitted for review. Mr. Foote stressed board members must ask the investigator of that particular case to request the evidence. Board members conceded they did not understand the "recusal" process and shared what influenced their action to recuse themselves in the past. Board members asked if they could "unrecuse" themselves from previous cases. Mr. Foote replied a board member may unrecuse themselves, but the reason for the action must be officially documented and recorded. Questions were raised regarding having personal knowledge of particular cases as a result of the peer review process. Mr. Foote stated that the peer review process is meant to be informal and open, and that if a board member is part of the peer review process and later the case is involved in disciplinary action, it may compromise the openness of peer review.

Ms. Wilson asked counsel to clarify board member recusal from a case based solely on disagreement with a proposed/final outcome or to avoid being on record as voting against an individual. Mr. Foote stated this was not an appropriate reason for recusal and recusal must not be used as a means of avoiding personal conflict.

Ms. Bouche asked if recusal is the same as abstaining. Mr. Foote clarified that recusal is when a board member removes themselves from a case and agrees to no involvement, participation or deliberation; whereas in abstaining from a vote, the board member continues to participate and deliberate the case. Mr. Foote added that if a board member has a conflict of interest, the member should leave the meeting at the beginning of the discussion; however, if a conflict becomes evident at some point during the deliberations, the member should immediately announce the conflict and excuse themselves from the meeting. Discussion centered on disclosing information to non-board members about enforcement deliberation, regardless of a recusal. Mr. Foote counseled the board should avoid situations to share the "board perspective" on the case and stressed the distinction between being an expert witness, advocate and neutral witness if members were called as an expert witness or to testify. He encouraged members to refer any questions regarding disciplinary actions or case file information to OHLA staff.

"Executive Session"

Mr. Foote discussed rules for Executive Session. In response to questions, he clarified what a board member can divulge about a licensee's reputation, and cautioned bringing personality conflicts into a deliberative process. He stated a board member cannot conduct their own private investigation, reiterating that if a board member has knowledge that is important to a case, the board member should contact the OHLA investigator. Mr. Peck commented that the minority of the Board may sway the rest of the board members into a mindset that there were "unintentional" violations, and then move to settle the case without going through due process. Mr. Foote responded that is why the majority of votes decide whether or not to impose disciplinary sanctions. Board members thanked Mr. Foote for answering questions.

[The remainder of Mr. Warren Foote's presentation was made during Executive Session.]

EXECUTIVE SESSION – Enforcement ORS 192.660 (1)(f) and (1)(h)

The Board entered Executive Session pursuant to ORS 192.660(1)(f) and (1)(h) to review investigations and consult legal counsel at 11:07 a.m. Ms. Carvalho recused herself from deliberations regarding file numbers 04-4279, 06-4745 and 06-4746 due to conflict of interest and Ms. Scholles recused herself from deliberations regarding file numbers 04-4280 and 04-4281 due to conflict of interest. Recusal refers to a public official or employee declining to participate in a matter because of a potential conflict of interest. For the record, recusal means the board members do deliberations or debates, make recommendations, give advice, consider findings, or in any other way assume responsibility for or participate in any aspect of the work or decision making relating to the matter where there are potential conflicts of interest.

File Number 03-01

An update on file number 03-01 was provided to the Board per the stipulated agreement. The named licensee was provided time to review the file and other pertinent information with the Board. The Board concurred that the licensee had complied with the stipulated agreement and noted that the case was closed.

MOTION

File Number 04-4279

Ms. Bouche made a motion and Ms. Scholles seconded to refer the file to the Enforcement Committee for further review and recommendations. Further request was made for OHLA staff to collect additional information. The motion passed with Ms. Bouche, Dr. Grant, Ms. Griffith, Ms. Dress, and Ms. Scholles voting aye.

MOTION

File Numbers 06-4745 and 06-4745

Ms. Scholles made a motion and Dr. Grant seconded to defer the file to the Enforcement Committee for review and recommendations. Further request was made that OHLA staff collect additional information regarding the case for this review by the Board. The motion passed with Ms. Bouche, Dr. Grant, Ms. Griffith, Ms. Dress, and Ms. Scholles voting aye. It was reiterated that Ms. Carvalho had recused her self from discussion of the file due to conflict of interest.

MOTION

File Numbers 04-4280 and 04-4281

Ms. Carvalho made a motion and Dr. Grant seconded that David Allen, AAG and OHLA staff follow through as appropriate with the terms of the stipulated order and continue negotiations within the parameters of the order with the proposed settlement agreement and any other negotiations pertinent in the case. The motion passed with Ms. Bouche, Ms. Carvalho, Dr. Grant, Ms. Griffith, and Ms. Dress voting aye. It was reiterated that Ms. Scholles had recused her self from discussion of the file due to conflict of interest.

APPROVAL OF THE MINUTES

MOTION

Ms. Scholles made a motion and Ms. Bouche seconded to approve the minutes of September 12, 2005. The motion passed with Ms. Bouche, Dr. Grant, Ms. Griffith, Ms. Dress, Ms. Carvalho, and Ms. Scholles voting aye.

Vaginal Birth after C-Section (VBAC), Twin and Breech Birth Report

Ms. Murphy reported on Number of Births/Fetal Demises – Oregon Occurrence In / Out of Hospital for 2003-2004:

Licensed Direct Entry Midwives - 2004

- Number of Births 298
- Number of Fetal Demises 3
- Percentage of Fetal Demises 19%

Licensed Direct Entry Midwives – 2003

- Number of Births 208
- Number of Fetal Demises 13
- Percentage of Fetal Demises 6.25%

Ms. Murphy continued her overview of the report including births and deaths by various attendants. Questions were raised regarding requirements for naturopathic licensing. Ms. Scholles stated that an additional year of training and certain number of births was required to obtain a credentialing in naturopathic obstetrics.

VBAC, Twin and Breech Complaint Report

Ms. Tamamoto provided the board with a summation of complaints which have been received between 2001 and 2005 related to VBAC, twin and breech births.

2001 through 2005 Complaints

- Total complaints received - 23
- Complaints related to VBAC, breech or twin births – 6
- Fetal Demise - 3

Ms. Bouche left the meeting at 3:11 p.m.

Letters of Concern

Ms. Griffith addressed a letter received from Dr. Kort, MD from Samaritan WomanCare Center in Lincoln City, Oregon; the letter opposed LDM's doing VBAC births out of the hospital. Within Dr. Kort's letter, he provides information regarding medical journal and national studies findings related to VBAC births done outside a hospital setting. Board members stated that midwives have been allowed to perform VBAC births since the beginning. Dr. Grant stated that if she has to do a VBAC she is required to stay at the hospital for an extended period. The Board requested OHLA send a response to Dr. Kort with clarification and facts regarding his comments.

Ms. Griffith addressed a letter from Daniel Peddycord, Public Health Director from Deschutes County, Oregon. Mr. Peddycord inquired on the process used to review birth outcomes associated with midwifery, stating there are concerns that mothers are not being provided full disclosure of practitioner qualifications and scope of practice; nor are LDM's referring mothers to social or public health organizations that could assist mother and newborn. The response sent to Mr. Peddycord from Trish Allbritton, Administrative Services Division Manager, was reviewed. The letter referenced ORS 687.480, requiring the Board of Direct Entry Midwifery develop practice standards that include participation in peer review; OAR Chapter 332, Division 20 Standards of Care, and Division 25 Practice Standards provisions detailing scope of practice and requirements; and ORS 687.495 that requires the Board to collect and report data on births where LDM's are the primary provider.

Public Comment

Ms. Anne Frye commented on Dr. Kort's letter on VBAC births, and offered her opinion on the VBAC studies he cited in his letter as flawed and not statistically matching the results. Ms. Frye pointed out that midwives have to go through the Certified Practicing Midwife process prior to becoming licensed. She suggested that Dr. Kort views were focused on a different model of care than Direct Entry Midwifery.

Ms. Jessica Dolin reported on an Oregon State University professor who will be conducting a study on all the births provided by midwives in Oregon, including whether they are licensed or nonlicensed. She stated that this study will be completed in the next few years. Dr. Grant asked if this would be different than the Department of Human Services Health Services vital statistic collection process. Ms. Dolin said that once a midwife signs up to be included in the study, all of the births would be recorded during the studies time period. Dr. Grant explained that this is prospective data and it is held at a higher level of credibility than retrospective data.

Ms. Griffith referenced the Birthing Center Advisory Committee, noting that VBAC births were the subject of hours of discussion and a great deal of research. She referenced the committee's work in adopting guidelines, in which the Board may want to adopt in the future. Ms. Griffith stated that Direct Entry Midwives use established guidelines to ensure midwifery care is entered into with informed consent by the mother.

The Board considered changing the administrative rules statement or creating a position statement stating that there is no proven risk of Direct Entry Midwives delivering VBAC births in the home setting. The Board tabled the discussion for future meetings.

2006 Subcommittees

MOTION

Ms. Carvalho made a motion and Ms. Scholles seconded to substitute Dr. Nancy Grant to Enforcement and Public Safety Committees. The motion passed with Ms. Griffith, Ms. Dress, Ms. Scholles, and Ms. Carvalho voting aye.

2006 SUBCOMMITTEE LIST	
Peer Review	Betty Griffith; Sue Morningstar; Sherry Dress
Education and Examination	Rosemary Carvalho; Holly Scholles; Sherry Dress
Enforcement	Nancy Grant, M.D.; Betty Griffith; Rosemary; Alternate Holly Scholles
Public Safety	Nancy Grant, M.D.; Sue Morningstar Michele Bouche
Legislation/Rules	Betty Griffith; Michele Bouche; Holly Scholles

Ms. Carvalho expressed concerns regarding statistics on VBAC, breech and twins births noting that it is important to gather clear and concise statistics regarding these types of births. Ms. Griffith stated that it will take time to gather statistics and once the information is collected the Board can revisit the issue. Dr. Grant suggested creating a prescribed form of required information to facilitate comparison and make it easier to quantify.

Revenues and Expenditures

Mr. Riggs explained the two main categories of interest. **Personal Services** are employee compensation and related benefits. **Services and Supplies** are non-personnel expenses for agency operations. Charges are divided into two types – direct and indirect – for each program. Indirect costs for agency operation include office supplies, rent, telephones, data processing hardware and software, etc. and costs are distributed by a prorate. Direct charges include attorney general counsel, postage, instate travel or investigative costs, and are distributed at actual rates. He reported on July 1, 2005 the balance was \$121, 346 and as of March 1, 2005 the cash balance was \$135,710.

Mr. Riggs stated as part of the 2007-09 budget development OHLA is in the formative stages of establishing a uniform fee structure for OHLA regulated professions. The proposed fee structure will reduce the number of separate administrative rules and special rulemaking required. He stated that the Direct Entry Midwifery fee will potentially decrease from \$1,500 a year to a proposed fee of \$25. Ms. Scholles asked if the Board only pays \$25 a year, how will OHLA appropriately allocate for the board. Mr. Riggs stated that the 50 licensed midwives will be brought in to a larger pool of licensees, similar to an insurance pool with one budget that

everyone is paying the same amount. Ms. Wilson stated that any large expenditures for litigation or special issues will be addressed with each respective board as needed. The adjustment will be implemented by rule and reported through 2007-09 budget request process.

Ms. Scholles left the meeting at 4:25 p.m.

JLCIMT Interim Report

Ms. Wilson stated she appeared before the Joint Legislative Committee on Information Technology (JLCIMT) to report progress of the conversion and assure the electronic data provided to the public from OHLA through the Oregon.gov portal is consistent and secure. She noted the agency may need to appear before the Emergency Board at a later date if additional funding is required in the current biennium.

Enforcement

Mr. Tryon reported on the number of complaints received in the following two time periods:

January 1, 2005 through December 31, 2005:

- Total Number of Licensees – 43
- Total Number of Complaints – 3

January 1, 2006 through February 28, 2006:

- Total Number of Licensees – 46
- Total Number of Complaints - 2

He provided a full comparison report on complaints received and orders written for the years of 2002 to date. Mr. Tryon provided an explanation of the complaints, ratio of complaints per license base and the ratio of complaints per licensee. Mr. Tryon gave an overview of the cases closed since September 2005. Ms. Carvalho asked if licensed midwives can partner and work with unlicensed midwives. Ms. Griffith stated that under the rules you cannot transfer care from a licensed midwife to an unlicensed midwife. Ms. Wilson concurred if a licensed midwife is working with an unlicensed midwife, as primary care provider, the licensed midwife will be held accountable for the outcome if any complications arise.

Licensing

Ms. Murphy reported there were 46 active licensed midwives with legend drugs endorsement. She pointed out a monthly and yearly comparison report for 2003 through 2005. She recapped the month-by-month breakdown of 2005 through 2006 comparison report.

Outreach and Communication

Mr. Bohot reported on the Bend Bulletin article from March 12, 2006, headlining "*Giving birth nearly claimed a life: Mother sues midwife over infection*" and "*The definition of a midwife*". He stated that the articles provided a more objective look at the midwifery profession. Mr. Bohot stated that Susan Moray, an Oregon licensed midwife, Certified Practicing Midwife and press officer for the Midwives Alliance of North America, thanked OHLA and the Board for responding to the Bend Bulletin article.

Mr. Bohot recapped the OHLA Overview & Service brochure that was rewritten and redesigned for clarity and readability.

Mr. Bohot provided a draft of the Board/Council Member Orientation Handbook and script for the new training video. He announced both will be reviewed by the OHLA Customer Connection Committee for input and suggestion.

Board Interest File

Ms. Griffith addressed the board interest file noting that it was available for board members to review.

Ms. Murphy asked for recommendations to improve the vital statistics data presented earlier. Dr. Grant suggested the quality of the data may be the result of how the information was requested. Ms. Murphy pointed out the need to change the peer review forms to add twins, breeches and VBAC births. The Board concurred with the change. Ms. Griffith reported that midwives are not using "LDM" and still using "LDEM", and added that for consistency all midwives need to be reporting the same way.

MOTION

Ms. Carvalho made a motion and Dr. Grant seconded to add twins, breeches and VBAC births to the peer review form. The motion passed with Ms. Dress, Ms. Griffith, Ms. Carvalho, and Dr. Grant voting aye.

The meeting was adjourned at 4:57 p.m.

Susan K. Wilson, Director