

From: Sharron Fuchs

Sent: Tuesday, May 07, 2013 2:18 PM

To: 'rep.bettykomp@state.or.us'; 'sen.rodmonroe@state.or.us'; 'rep.lewfrederick@state.or.us'; 'rep.sherriesprenger@state.or.us'; 'sen.chrisedwards@state.or.us'; 'sen.fredgirod@state.or.us'

Cc: 'ashley.clark@state.or.us'

Subject: HB 2997 allowing unlicensed 'traditional midwives' to continue practicing

Dear Members of the Ways and Means Subcommittee on Education:

HB 2997 initially began as a mandatory licensure bill however the bill in its current form still allows non licensure if you call yourself a **'traditional midwife'** and don't advertise. Below is information regarding Marcene Rebeck a **'Traditional Midwife'** who will stand trial for manslaughter and criminally negligent homicide later this month in Coos Bay and an article from the Bend Bulletin regarding a malpractice case for a brain damaged child. The midwives in the malpractice case were licensed.

I am writing you to ask you to deny any additional state money to implement HB 2997 which not only allows unlicensed persons to practice midwifery but also seeks greater independence for the Board of Direct Entry Midwifery (BDEM) from their overseer, the Oregon Health Licensing Agency (OHLA). My reasoning for this request is that the board of Direct Entry Midwifery is hopelessly in the hole by thousands of dollars which will only increase over time. The reasons for the debt are multi-factorial but a large portion of it is due to the investigation of complaints against midwives and for the board to defend themselves against litigation. The complaints often stem from higher risk pregnancies that the midwives perform yet the board refuses to pull in the reins on their licensees and move strictly to attend lower risk deliveries which was the original intent of their 1993 title act that then Governor Barbara Roberts signed into law. (see Governor Roberts 2010 letter to OHLA below).

Although I have concerns about the OHLA it would be unconscionable to give money to the board for anything, including money to lower licensing fees, when the BDEM has done such a poor job of semi-self regulation. The only way the board can function now is to cost shift from other professionals who are also under OHLA and I fear if they achieved more independence there would be an even greater lack of oversight for public safety as they could not afford the costs of proper investigations.

I admire Reps. Keny Guyer and Parrish for their efforts with this bill but the reason for it to begin with (a death in Eugene 2011 with unlicensed midwives) has been lost and the only real gain now is for the midwives themselves to gain more long awaited independence from OHLA. The midwives as a group (both licensed and unlicensed) have given up virtually nothing regarding the hotly contested issue of licensure that this bill was to address as all one has to do is call oneself a 'traditional midwife' ,not advertise, give a few items of 'informed consent' and low and behold nothing has changed .

Please do not enable the BDEM to continue, or perhaps worsen, their lack of attention to public safety. Their money problems would likely resolve if they paid attention to public safety and moved to lower risk deliveries not by granting them independence to continue status quo.

Please vote NO on HB 2997.

Yours truly,

Sharron Fuchs

Manslaughter / Criminally Negligent Homicide Marcene Rebeck Traditional Midwife:

<http://www.gofundme.com/2l7gmg>

‘Marcene Rebeck, a Coos County, **Oregon traditional midwife**, preschool teacher, and business owner that has served her community by assisting in home births for over 30 years with the utmost care, professionalism and wisdom, has been indicted on **second degree manslaughter and criminally negligent homicide for the death of a baby in June 2011**. The baby died from sepsis in a hospital four days after Marcene assisted in the baby’s birth at home; the family is not seeking prosecution. The charges against her are completely unjustifiable. We need your help to raise funds to help pay for the costs of her lawyers and legal fees. Please consider donating to our cause.’

\$50M sought in Bend midwife suit

* The parents of boy born with cerebral palsy sue a birth center, the state and 2 midwives over what they deem negligence

By Sheila G. Miller / The Bulletin

Published: April 13, 2012 4:00AM PST

The parents of a child who suffered complications at birth are suing the state, a Bend-based birth center and two of its midwives for medical negligence and fraud. They are asking for more than \$50 million.

In a lawsuit filed April 2, Kristine and Greg Andrews - on behalf of their son - are suing the state of Oregon, Motherwise Community Birth Center, midwife Nicole Tucker and midwife Christyn King for the medical problems they say the baby faces as a result of oxygen starvation during birth.

The lawsuit asks for \$25 million in noneconomic damages as well as \$22.5 million in economic damages in the form of ongoing medical and therapeutic care and lost wages. It also asks for \$3 million in noneconomic damages to Kristine Andrews for the experience she had with her son's birth.

The Andrews' attorney, J. William Savage, said he hoped to serve the lawsuit this week.

"This child's health care costs are going to be substantial," Savage said. "He'll never earn a living in a conventional sense and will never have a normal life."

Savage added that the child will need constant care and, because he is not ventilator-dependent or tube-fed, he will likely have a near-normal life expectancy.

Tucker, who started Motherwise Birth Center in 2007, did not return a call for comment.

According to the lawsuit, the Andrewses contracted with Motherwise to provide midwifery services for the birth of their child. The child was expected to be born in April 2010.

The lawsuit alleges that Motherwise, Tucker and King did not have malpractice insurance and did not alert the Andrewses to that fact. According to Oregon administrative rules, licensed birth centers and midwives must provide patients with a disclosure form that includes, among other things, whether they hold malpractice coverage.

"Had the required disclosure been made to Kristine Andrews or Greg Andrews about the absence of any malpractice coverage, they would not have agreed to proceed with midwifery or (licensed direct entry) services from defendants Motherwise LLC, Tucker and/or King," the lawsuit states.

The Andrewses' son was born April 5, 2010. According to the lawsuit, in the weeks leading up to the birth, Kristine Andrews had indications of high blood pressure, which can cause a variety of problems for both mother and baby.

Kristine Andrews went to Motherwise on April 2, 2010, to try to start labor through stripping the membranes, a procedure involving the membrane separating the amniotic sac from the uterine wall. The procedure causes the body to release hormones that can lead to contractions. Andrews was then sent home, but returned two days later.

According to the lawsuit, Andrews still had high blood pressure "and signs of a developing infection" and was sent home once again. When she returned to the birth center on April 5, her blood pressure remained elevated for three more hours, including during the birth of her son.

The lawsuit states no monitoring equipment was used to check the fetal heart rate. Nevertheless, "the fetal heart rate was noted to indicate periodic bradycardia (slow heart rate) and nonreassuring decelerations of the fetal heart rate."

When born, the infant did not respond to stimulation and did not breathe on his own. He was taken to St. Charles Bend, and 10 days later was discharged with signs of brain damage caused by oxygen starvation from birth.

The baby suffered, among other things, significant brain damage and cerebral palsy.

"These injuries, harms and losses are expected to be permanent in nature," the lawsuit states.

The lawsuit alleges Motherwise and the two midwives should have referred Kristine Andrews to an obstetrician/gynecologist for prenatal and labor and delivery services.

It also alleges the birth center and its midwives should have told the Andrewses they had no malpractice insurance.

Finally, the lawsuit alleges the state was negligent.

The Oregon Administrative Rules have a list of "absolute risk factors" for birthing centers. When a risk factor is present, the regulations state a pregnant mother should be transferred to a higher level of care, like a hospital. One of the risk factors is hypertension. The state listed the threshold at a blood pressure of 150/100. According to the lawsuit, that threshold was "inappropriate and not evidence based."

The Andrewses allege the state was negligent for several reasons, most notably because of the blood pressure level it lists as a risk factor. The lawsuit also alleges the state didn't require a mandatory disclosure form be produced to members of the public receiving services from midwives, licensed direct

entry midwives or birthing centers, and that it didn't implement "evidence based standards for the protection of Oregon citizens."

"The state, if it's going to require mandatory disclosures be made, it should implement a uniform disclosure form to ensure those requirements are being satisfied," Savage said. "It's a very simple system, but beginning with airline pilots and now in the medical field in terms of hospitals, checklists are becoming more predominant and it just ensures that people are told what they need to be told, which in this case didn't occur."

A pretrial hearing is slated for July.

- Reporter: 541-617-7831, smiller@bendbulletin.com

BARBARA ROBERTS
7870 S E. 13th #210
Portland, Oregon 97202

Mediator : Bert Krages

Regarding: Proposed Rules / Licensed Direct Entry Midwifery

I am writing to you in lieu of a personal appearance at the public comment hearing scheduled for October 28th, 2010 in Salem as I am unable to attend in person.

As a bit of history, I was the Governor for the State of Oregon when Senate Bill 1063 granting the title of Licensed Direct Entry Midwife was proposed, argued and voted upon in 1993. When I signed the bill in to law it was my understanding that low risk pregnancies and births would be the types of situations that a Licensed Direct Entry Midwife would attend and bill the Oregon Health Plan for. I never at any time considered, nor was I given information to the idea, that Licensed Midwives would attend to any situation that extended to a risk level higher than average LOW RISK pregnancy and birth. Further, I certainly never envisioned that higher risk births that included Vaginal Birth after a Cesarean section, breech or twins would be included in the scope of practice of a Licensed Direct Entry Midwife. At the time I fully understood the meaning of scope of practice and as I often had to address that issue with other health care professions.

It dismays me now to hear some of the devastating outcomes that have occurred with higher risk deliveries that are attended outside of the hospital without safe and proper care, including lack of access to the immediate help of a medical professional should a potentially devastating situation arise. I understand that some of these crisis outcomes have led to

disciplinary actions against the midwives involved but I have to wonder how many of these situations could have been prevented simply by avoiding these high risk situations in the first place.

By way of this letter I ask you as the mediator of the proposed rules process to recommend to the Oregon Health Licensing Agency that as the state mandated agency that oversees and regulates the Licensed Direct Entry Midwifery profession, they first and foremost fulfill their duty to protect the public, respect the intent of the 1993 law that I signed into law , and take a look at the guidelines from the other countries that were discussed with the legislative committees and find the correct application of those guidelines for the practice of Licensed Direct Entry Midwifery in Oregon.

Respectfully, Barbara Roberts, Oregon Governor 1991-95