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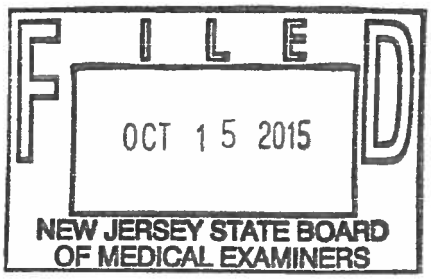

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS
MIDWIFERY LIAISON COMMITTEE

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF LESLEY FRANCO, C.P.M. LICENSE NO. 25MW00001200 TO PRACTICE MIDWIFERY IN THE STATE OF NEW JERSEY	Administrative Action **FINAL CONSENT ORDER**

This matter was opened to the New Jersey State Board of Medical Examiners (the "Board"), Midwifery Liaison Committee upon receiving information that Ms. Franco's ("Respondent") patient had given birth to a 39 week still-born fetus at the hospital. Respondent had been planning a home birth delivery of D.A., who had gestational diabetes, which classified her as an increased risk patient. Respondent appeared on April 20, 2015 before the Committee to discuss her care and treatment of D.A. as well as her practice and knowledge of midwifery.

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The information revealed that Respondent, despite knowing that D.A. had been discharged from another home birth practice because of her diagnosis of gestational diabetes, accepted D.A. into her home-birth midwifery practice when she was 31 weeks pregnant. During the time Respondent treated D.A., Respondent failed to address her gestational diabetes and the implications for the health and well-being of both D.A. and her fetus. Respondent also failed to consult with and establish a management plan with her affiliated physician, which was required due to D.A.'s diagnosis of gestational diabetes, during the course of D.A.'s treatment. D.A. went into labor on November 27, 2013, and was allowed to labor at home for two days. On November 28, 2013, Respondent was unable to detect a fetal heart beat and D.A. was transported to the hospital where she gave birth to a still-born fetus weighing 9 pounds, 6 ounces on November 30, 2013.

During Respondent's appearance before the Committee in April 2015, Respondent offered testimony regarding her knowledge of midwifery care, specifically as to the treatment for an increased risk patient. Respondent also admitted to the Committee that she changed the estimated fetal weight of D.A.'s fetus in the patient record to 8 ½ pounds a few days after D.A. had delivered the stillborn fetus. She had previously noted that the weight was 7 ½ pounds and had provided those records to the hospital when D.A. was

transferred. Respondent did not indicate in the patient record why or when she changed the fetal weight.

Upon review of the information obtained through the Committee's investigation into this matter, including the retention of an expert, it is alleged that Respondent's acceptance of an increased risk patient, D.A., into her home-birth midwifery practice, failure to address and monitor her patient's gestational diabetes, failure to refer the patient to another provider and/or consult with her affiliated physician on this patient, and failure to ensure that her patient had a safe labor by allowing her to labor at home instead of a hospital constitutes gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, and safety in violation of N.J.S.A. 45:1-21 (c); repeated acts of negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(d); professional or occupational misconduct in violation of N.J.S.A. 45:1-21(e); and a violation or failure to comply with the provisions of any act or regulation administered by the Board in violation of N.J.S.A. 45:1-21(h), specifically failing to establish proper clinical guidelines in violation of N.J.A.C. 13:35-2A.6. and failure to establish a management plan with the affiliated physician for an increased risk patient in violation of N.J.A.C. 13:35-2A.9.

It is further alleged that as recently as her appearance before the Committee in April 2015, Respondent continues to

demonstrate a current lack of basic knowledge of the safe practice of midwifery, particularly in her treatment of women at risk. This current lack of basic knowledge in the safe practice of midwifery, if proven, would constitute gross negligence, gross malpractice or gross incompetence which damages or endangers the life, health, welfare, and safety in violation of N.J.S.A. 45:1-21(c); repeated acts of negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(d); and professional or occupational misconduct in violation of N.J.S.A. 45:1-21(e).

Lastly, it is alleged, that Respondent's conduct in falsifying patient records constitutes dishonesty, fraud, deception, misrepresentation, false promise or false pretense in violation of N.J.S.A. 45:1-21(b), and professional misconduct in violation of N.J.S.A. 45:1-21(e).

Respondent desires to settle this matter obviating the need for formal proceedings. Respondent, not contesting the allegations, and the Board, finding the within disposition adequately protective of the public health, safety and welfare, and other good cause having been shown,

IT IS, therefore, on this 30 day of September 2015,

ORDERED THAT:

1. Respondent, Lesley Franco's license to practice midwifery is suspended for a minimum of four years from signature of this Order on September 30, 2015, with a minimum of the first two years

served as an active suspension and the following two years served as a period of probation. The period of active suspension will be tolled for any period of time Respondent practices midwifery in another jurisdiction.

2. Respondent is to immediately cease and desist from the practice of midwifery. Respondent shall mail her license and biennial registration to William Roeder, Executive Director, New Jersey Board of Medical Examiners, P.O. Box 183, Trenton, New Jersey 08625.

3. During her period of probation, Respondent will be monitored by a Board approved Certified Professional Midwife ("CPM") licensed in the State of New Jersey. The scope of the supervision and requirements of the monitor will be further delineated following Ms. Franco's reinstatement hearing. The cost of the monitor's services shall be borne by Respondent and shall not be passed on to patients/third party payers.

4. The monitor shall comply with the requirements of HIPAA (45 CFR Parts 160 and 164) and maintain and respect the confidentiality of patients and any individually identifiable health information he/she may acquire in the necessary performance of his/her functions, and shall not make any disclosures of information concerning individual patients other than disclosures to the Board and counsel for both parties as may be necessary to comply with this Order.

5. During the period of active suspension and prior to Respondent's request for the reinstatement of her midwifery license, Respondent shall successfully complete full courses in the areas of risk assessment, diagnostic testing, and complications during the antepartum, labor/delivery, and postpartum stages of pregnancy. The required coursework shall be completed at a Midwifery Education and Accreditation Council ("MEAC") approved school. All coursework must be pre-approved by the Committee. Respondent shall provide the Committee with the course syllabus and any other documentation, including, but not limited to the school's approval or acceptance of Respondent into the school, so that the Committee can determine whether the course is appropriate. If any portion of the required coursework contains a clinical component, Respondent shall provide this information to the Committee who may require Respondent to provide to the Committee the name of her proposed supervisor for the clinical component. All expenses arising from the course(s) and/or supervision shall be the responsibility of the Respondent. Successful completion means that all sessions were attended, all assignments were properly and appropriately completed and a passing grade was achieved which was unconditional and without reservation.

6. Respondent is assessed costs of $3,600.00, which includes

the transcript of the April 20, 2015 investigative inquiry and the expert report. Payment shall be made by bank check, money order, or wire transfer payable to the State of New Jersey and forwarded to William Roeder, Executive Director, New Jersey Board of Medical Examiners, P.O. Box 183, Trenton, New Jersey 08625. If a form of payment is presented other than the payment noted above, it will be rejected and returned to Respondent. Payment is due prior to her application for the reinstatement of her midwifery license. Failure to complete payment shall be considered a violation of this Order and shall result in acceleration of the balance of the remaining debt and the filing of a Certificate of Debt.

7. Prior to the reinstatement of her midwifery license, Respondent shall appear before the Committee to demonstrate her fitness to resume practice as shown by successful completion of all pre-approved required retraining, her current knowledge of midwifery practice, and compliance with all New Jersey laws for midwifery practice. Respondent is aware that compliance with all the terms contained herein is a minimum threshold to demonstrate fitness to practice midwifery in the State of New Jersey. At the time of this appearance, additional coursework will only be required of Respondent upon (a) failure to demonstrate successful completion of all coursework previously approved and required or (b) failure to demonstrate to the Committee that her knowledge of midwifery is appropriate to safely practice midwifery. Respondent

shall be permitted to appear before a Committee six months prior to the end of the suspension period. Respondent agrees that this allowance is merely to afford her and the Committee advance time to begin the process to address her reinstatement but reinstatement of her midwifery license will not be granted prior to the completion of the entire two (2) year period of suspension.

8. At the time of her appearance before the Committee, Respondent shall provide proof to the Committee that she has successfully completed all required coursework. Respondent shall be prepared to submit for Committee approval the name of her proposed CPM monitor and affiliated physician. The proposed affiliated physician shall provide confirmation that he or she has been made been made aware of this action and understands his or her responsibility in serving as the affiliated physician. Respondent shall also submit her clinical guidelines for the Committee's approval.

9. At the time Respondent seeks to re-enter the practice of midwifery, Respondent must provide proof of having successfully completed the required coursework and appear before the Committee. At such time as Respondent is allowed to re-enter the practice of midwifery, she must undergo a two year period of probation before she can be granted an unrestricted midwifery license.

10. Following Respondent's appearance and review of all information presented to the Committee, the Committee can determine whether further limitations or restrictions on Respondent's license are necessary to protect the public health safety and welfare.

11. Respondent shall comply with the attached directives which are incorporated herein by reference.

12. The parties hereby stipulate that the entry of this Consent Order is without prejudice to any further restrictions upon any reinstatement by the Committee and the Board. The parties further stipulate that entry of this Consent Order is without prejudice to further action and investigation by the Board, Acting Attorney General, the Drug Control Unit, the Director of the Division of Consumer Affairs, or other law enforcement entities resulting from Respondent's conduct prior to the entry of this Order. The Board agrees not to file any action arising from the information set forth in this Order, unless Respondent is found in violation of any provision contained herein.

13. Any violation of this Consent Order could result in further discipline pursuant to N.J.S.A. 45:1-21 and N.J.S.A. 45:1-22.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: _____
STEWART BERKOWITZ, M.D.
President

I have read and understand the within Consent Order and agree to be bound by its terms.

_____
Lesley Franco, CPM

9/30/15
Dated

Consented to as to the form of this Order.

_____
Valerie Borek, Esq.

9/30/15
Dated

DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE OR CESSATION OF PRACTICE HAS BEEN ORDERED OR AGREED UPON

APPROVED BY THE BOARD ON AUGUST 12, 2015

All licensees who are the subject of a disciplinary order or surrender or cessation order (herein after, "Order") of the Board shall provide the information required on the addendum to these directives. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq: Paragraphs 1 through 4 below shall apply when a licensee is suspended, revoked, has surrendered his or her license, or entered into an agreement to cease practice, with or without prejudice, whether on an interim or final basis. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains probationary terms or monitoring requirement.

1. **Document Return and Agency Notification**

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. Prior to the resumption of any prescribing of controlled dangerous substances, the licensee shall petition the Director of Consumer Affairs for a return of the CDS registration if the basis for discipline involved CDS misconduct. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. **Practice Cessation**

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension, surrender or cessation, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The licensee subject to the order

is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The licensee subject to the order may contract for, accept payment from another licensee for rent at fair market value for office premises and/or equipment. In no case may the licensee subject to the order authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. In situations where the licensee has been subject to the order for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is (suspended), subject to the order for the payment of salaries for office staff employed at the time of the Board action.

A licensee whose license has been revoked, suspended or subject to a surrender or cessation order for one (1) year or more must immediately take steps to remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. **Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies**

A licensee subject to the order shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice.[1] The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board order.

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[1] This bar on the receipt of any fee for professional services is not applicable to cease and desist orders where there are no findings that would be a basis for Board action, such as those entered adjourning a hearing.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended or who is ordered to cease practice for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A disqualified licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall also divest him/herself of all financial interest. Such divestiture of the licensee's interest in the limited liability company or professional service corporation shall occur within 90 days following the entry of the order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Division of Revenue and Enterprise Services demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation or sole member of the limited liability company, the corporation must be dissolved within 90 days of the licensee's disqualification unless it is lawfully transferred to another licensee and documentation of the valuation process and consideration paid is also provided to the Board.

4. **Medical Records**

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that (during the three (3) month period) immediately following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. If the licensee has a website, a notice shall be posted on the website as well.

At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and Inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

6. Payment of Civil and Criminal Penalties and Costs.

With respect to any licensee who is the subject of any order imposing a civil penalty and/or costs, the licensee shall satisfy the payment obligations within the time period ordered by the Board or be subject to collection efforts or the filing of a certificate of debt. The Board shall not consider any application for reinstatement nor shall any appearance before a committee of the Board seeking reinstatement be scheduled until such time as the Board ordered payments are satisfied in full. (The Board at its discretion may grant installment payments for not more than a 24 months period.)

As to the satisfaction of criminal penalties and civil forfeitures, the Board will consider a reinstatement application so long as the licensee is current in his or her payment plans.

NOTICE OF REPORTING PRACTICES OF BOARD REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

(1) Which revokes or suspends (or otherwise restricts) a license,
(2) Which censures, reprimands or places on probation,
(3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license(and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A.45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting

a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.