Midwives Protection Program

RISK NOTE

SUBJECT: Case Communication with Colleagues

In cases of challenging births, difficult client situations, or scenarios where midwives feel concerned that legal issues may arise, it can be very natural to want to discuss the situation with practice partners or other colleagues. This article is intended to guide registered midwives in best communication practices in these scenarios.

Legal Risks Related to Case Communication

There is a risk with all clients, especially in cases of poor outcomes, that the midwifery care provided will become subject of a lawsuit or complaint with the BC College of Nurses and Midwives (BCCNM). Even in cases where families seem satisfied with their care, or outcomes do not seem outside of what the midwife expected, the clients may in future launch an action or file a complaint. This risk exists for 21 years from birth, wherein the child has two years after turning 19 to file their own lawsuit, if the parents had not done so while their child was a minor. This situation would be very rare, however, as lawsuits are generally filed much sooner to assist with costs of caring for the disabled or injured party.

In the case of a legal action or BCCNM complaint, all oral and written communications about a case may need to be disclosed and may be examinable. The only exceptions would be privileged communications between a midwife and her legal counsel, or communications occurring within a Section 51 committee that is performing a Quality Assurance (QA) review.[1] Therefore, it is crucial to recognize when, where, and with whom you are discussing a case, in order to understand how that conversation could be used in the future. For example, talking about a poor outcome with a colleague may lead to your colleague being subpoenaed and having to give evidence in court about that what was said in that communication. This scrutiny by a court may even apply to what you might have hoped or considered to be only "need to know information" within a shared practice. While not all communications about a case may pose an issue, some may.

General Case Communication Tips

MPP does not suggest a midwife never discuss specific outcomes or particular cases with colleagues. Rather, we caution the midwife to think about how information is best communicated, to whom, and for what purposes. The following tips can be helpful in navigating appropriate communication.

[1] Further details provided in MPP's Risk Note "Understanding Section 51 of the Evidence Act".

Does this person need to know about this case?

Is the person you are speaking to relevant to the care of the client? Is the client receiving ongoing care by a practice partner who will need to be aware of new or evolving risks in order to provide quality care to that client? In these cases, it is advised to discuss whatever facts are necessary with this person, and record notes about what was discussed and what care plans emerged. If the answers to the above questions are no, then it is likely that you should not be discussing the case with this person.

Consider privacy requirements

The BC *Personal Information Protection Act (PIPA)* protects health care consumers from having their personal health information shared inappropriately.[2] As such, it is important to ensure that all communications regarding a client's care, as well as their personal health records, are protected.

PIPA requires that organizations not collect, use, or disclose personal information without consent of the individual.[3] Consent can be implied where it would be reasonable to consider that a client would expect their information to be shared,[4] for example, between practice partners who are sharing care of a client, or with members of the health care team for consultation, or with those who are providing direct care to a client. On the other hand, sharing personal information with individuals who are not directly linked to the client can be a breach of confidentiality, *PIPA*, and BCCNM Standards of Practice.[5]

The BCCNM Policy on Medical Records[6] provides further relevant privacy information, as well as steps to take if privacy is breached. Further, the BCCNM handout on PIPA Requirements[7] is useful to review.

Is the *method* of communication being used appropriate for the situation?

Remember that written documents or communications can be called into evidence and be required to be disclosed. Rather than comment on a colleague's care or a case outcome in a casual email, consider whether the comment would be better in a personal conversation.

Similarly, remember the client's confidentiality rights, as well as potential protection under Section 51 of the *Evidence Act*. Prior to entering into a conversation in front of other health care providers, ask yourself whether it would be better to be done in private, or in the context of a protected Section 51 QA review. Alternately, if the concern is

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[2] *Personal Information Protection Act*, [SBC 2003] c 63 [*PIPA*] http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_03063_01

[3] *PIPA*, s 6(1) and s 18.

[4] *PIPA* s 8.

[5] BC College of Nurses and Midwives (2020*). Standards of Practice: Standard Eleven*. https://www.bccnm.ca/Documents/standards_practice/rm/RM_Standards_of_Practice.pdf

[6] BC College of Nurses and Midwives (2019). *Policy on Medical Records*. https://www.bccnm.ca/Documents/standards_practice/rm/RM_Policy%20on_Medical_Records.pdf

[7] BC College of Nurses and Midwives (2016). *Personal Information Protection Act (PIPA) Requirements*. https://www.bccnm.ca/Documents/standards_practice/rm/RM_Personal_Information_Protection_Act_Requirements.pdf

significant, you may want to speak directly with a lawyer in order to be protected by solicitor-client privilege.

Of course not every case communication needs to go through a lawyer. However, where there has been a serious adverse outcome (even if the family appears satisfied with care) or the family or other colleagues are expressing concerns about the midwifery care, the midwife should report the incident to MPP as soon as possible and not discuss the case until advice is received from legal counsel.

Specific Scenarios Where Case Communication Occurs

Case discussion with practice partners

If the client in question remains in care of the midwifery team, the midwife is naturally obliged to share with her practice partners any clinical information relevant to the ongoing shared care of the client. This would include any challenges arising in the provision of care, poor outcomes, increased areas of risk for client or newborn, and any other information that a primary care provider would need to know in order to provide safe care to the client. If the midwife has not already reported to MPP, this may be a good time to report.

Practice chart reviews

Registered Midwives strive to practice to the highest standards, in order to ensure best outcomes for their clients. As such, they are required to frequently evaluate their performance in an effort to continually improve the care they provide.[8] Evaluation can include regular chart reviews within a practice, as well as peer review discussions within the local midwifery community.

These reviews are generally informal and can include both verbal communication as well as written notes. In the normal course of events, these case communications should not be disclosed to the client. However, in the event of a poor outcome or BCCNM complaint, any written records or recollections of verbal discussions may be subject to legal scrutiny.

> **Tips:** Should a care plan or detailed discussion occur in a chart review about a case, be sure to record it clearly. Note when chart reviews occur and who was present for the review. Only include those who are clinically relevant to the client's care in the review.

Peer reviews

Contrary to popular belief, peer reviews are not protected under Section 51 simply because they are held within a hospital. In fact, there is no specific protection for peer reviews. Any notes or recordings that are taken in these contexts could be subject to subpoena and cannot be protected from use. At the same time, they are required by the

[8] BC College of Nurses and Midwives (2020). *Standards of Practice: Standard Thirteen*. http://BCCNM.bc.ca/wp-content/uploads/2015/12/11.01-Standards-of-Practice.pdf

BCCNM as part of the Quality Assurance Program.[9] This can cause confusion as to how best protect the peer review process from legal scrutiny.

[9] BC College of Nurses and Midwives (2018*). Policy on Peer Case Review*. https://www.bccnm.ca/Documents/quality_assurance/RM_Policy_on_Peer_Case_Review.pdf

Tips: Consider carefully whether you need to take notes, for example of recommendations coming out of a peer review. If you do take notes, avoid recording specifically which cases are discussed and ensure client identification is not possible.

Quality Assurance Reviews

QA reviews, also referred to as Morbidity and Mortality rounds, QA committees, etc. are established through hospital QA departments as a process to reflect on and learn from case outcomes. These case reviews generally include the whole care team involved in the case, and are protected under Section 51 of the *Evidence Act*, with some exceptions. For full details, please see the MPP Risk Note *Understanding Section 51 of the Evidence Act*.

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Updated by JT Beck BA, JD Candidate, Law Co-op Student, Risk Management Branch

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