



Midwives Protection Program

RISK NOTE

SUBJECT: Communication with Clients after Adverse Events

There can be times when it is challenging to communicate with clients. Difficult situations can and do arise, causing tension in the relationship, and potentially leading to complaints to the regulatory body. In more extreme cases, poor outcomes can lead to allegations of negligent care and litigation.

The following is general advice to consider. A midwife should contact the MPP for advice specific to their circumstances prior to speaking with a client in more serious cases.

Communicating with Clients about Difficult Outcomes

There are two benefits to communicating with your clients in difficult times: improved trust and preservation of the relationship, as well as an opportunity for the midwife to address and clarify any concerns or misunderstandings that the client may have. Preserving client relationships is desired by all parties involved, especially when the client's care is ongoing. Frank and honest discussion with the client can go a long way to preserving the relationship and building trust with the clients. Good communication can greatly reduce the chance that the client will file a complaint with the BC College of Nurses and Midwives (BCCNM) or start legal action.

Harm, or perception of harm, can come from many aspects in health care that the midwife may not be responsible for or have caused. A variety of risks commonly arise in pregnancy and birth, regardless of care provider. Some of the harms that a client might perceive can be a common result of normal pregnancy and birth, or caused by specific risk factors related to that particular client. On the other hand, harm can also arise from physicians', nurses', midwives' or other members of the health care team's work including errors, clinical judgement, and patient safety incidents.

In all of these situations, there are several key steps to keep in mind:

1. Report to MPP

Any time a midwife feels that a client is unhappy about the care they received or the outcome of their care, the midwife should notify the MPP by completing an incident reporting form (found under the claims tab on our website, www.bcmpp.org). Even if you suspect the client is not going to submit a complaint, it is important to report the event. The sooner the MPP is notified, the better we are able to help you manage this stressful event in your professional life. Any delays in reporting can negatively impact our ability to assist you with providing a thorough and well-considered response to a complaint.

Early and prompt notification of the case allows the MPP to provide detailed advice specific to communications with the client, and to help you prepare should there be a subsequent complaint or legal action.

Please review the incident reporting guidelines to see which cases require reporting. However, be reminded that you are encouraged to call and check in with the MPP should you be unsure. There is no downside to reporting a potential issue.

2. Debrief the situation with the client and disclose all relevant facts

Following an adverse event, it is important to take time to personally debrief with the client. Debriefing can sometimes include family members, if the client consents to their involvement. In some situations, the client may not feel ready to debrief immediately after the event. However, you can offer to debrief again in future visits when the client may be ready to discuss the events or the outcome with you. Be sure to chart every time you offer to debrief and what the client's response was.

At this stage, it is important to disclose all relevant facts, acknowledge that something unfortunate has occurred, and demonstrate a genuine expression of care, concern, and regret for the circumstances of the event.

In this discussion, explain the *facts* of the situation, and review the clinical decisions that were made. Fill in gaps that the client may have in their understanding of the events that occurred, and reasons for decisions that the client may not understand. Avoid speculating about what may have caused a poor outcome. Review the recommended next steps in clinical care. Again, carefully document the discussion and the client's response. Be aware that anything you say can be used in future legal issues.

It can be important to include your practice partner, involved physicians, or other relevant colleagues in this discussion, should others have played a role in the event or outcome. This ensures that your client has the opportunity to speak to and debrief with all involved.

3. Provide opportunity for the client to ask questions

Allowing clients an opportunity to ask questions is a crucial step in debriefing an adverse event. There will be multiple stages at which this opportunity will be important. Avoid speculating as to answers if you are unsure. Stick to the facts as much as possible, without accepting or admitting fault in the early stages after an event. Take the time to listen to your client's feelings and explain as best as possible. Document each of the client's questions, and the responses they were provided by yourself or other team members.

4. Find support for your own feelings

Witnessing a traumatic or difficult event can be very stressful for providers. As well, feeling that a client is unhappy with care or may initiate a complaint can be very worrisome. Avoid debriefing your personal feelings with your client. Take time off if needed and focus on your own wellness in a difficult time.

If you need to talk about your experience, contact the MPP and allow us to provide support that is protected through solicitor-client privilege. Engaging a counselling service such as the one provided through the [Midwives Association of BC](#), or a private

counsellor, can be very helpful. Unlike your communications with a lawyer, your conversation with a counsellor, therapist, psychiatrist, psychologist or other professional, may not be considered privileged by a Court. Be sure to discuss the matter of privilege with that provider before notes are made (as they may not be aware of the foregoing). Avoid discussing the specifics of a case or making any statements which might be used against you, unless your discussion is with a lawyer through MPP.

5. Document, document, document!

Difficult situations require excellent charting, to ensure that each discussion is recorded thoroughly, including the contents of the discussion as well as the statements made by those present to the best of your ability. These conversations can be next to impossible to recall in detail years later should the need arise. Ensure that discussions are noted in the chart in a timely fashion, avoiding late entries wherever possible.

If you feel a need to document more than facts, such as your opinions and detailed recollections of the event, you can utilize a separate document outside of the chart entitled "For my lawyer only". If prepared as part of obtaining legal advice, it is protected under solicitor-client privilege.

Apologizing to Clients

In some scenarios, it may be appropriate to offer an apology to a client for harms the client has experienced as a result of the care they received. The following are general guidelines for making apologies to clients:

It is always acceptable to express sympathy or regret to a client, for their situation, experience, or loss. These statements generally do not imply a sense of personal fault or accepting liability. For example, stating "*I'm so sorry you're having such a rough time right now. Is there anything I can do to help you?*" is very different than saying "*I'm so sorry I did that poorly and now you are having such a rough time. I wish I had done a better job so you didn't have to go through this.*"

Where appropriate, apologies are an effective component of complaints prevention and management. They demonstrate to the client and family, as well as colleagues and community, that a midwife is empathetic and taking responsibility for their own actions. In fact, "The failure to be empathetic and apologize is a leading driver of complaints and legal actions".¹ Benefits of apology are that there is: a reduction in litigation, an increased chance of accepting a settlement in case of legal action, and the provider being seen as more likely to view the offender as moral, forgivable, and likely to be more careful in the future.²

Do not apologize or make admissions of fault without speaking to MPP legal counsel first. This is a condition of the coverage provided by the MPP to midwives. The natural implication of an apology is that one is admitting fault or liability. As such, the midwife should be clear exactly what she is apologizing for, and ensure that this apology

¹ CMPA (2015). *Disclosing harm from healthcare deliver: Open and honest communication with patients.*
<http://www.cmpa-acpm.ca>

² Prue Vines (2008). *Apologies and Civil Liability in the UK: A View from Elsewhere.* *Edinburgh Law Review*, Vol. 12, 220-221.

is supported by the MPP legal counsel. Again, this is different than disclosing facts to a client, or expressing regret or sympathy for their position or circumstance.

Apologies are generally protected under the *Apology Act* as not constituting an admission of liability or fault.³ In general, apologies are not admissible in court proceedings. The *Apology Act* exists to improve the civil justice system by “promoting early and effective resolution of disputes by removing concerns about the legal impact of an apology”.⁴ However it is important to note that the protection provided by the *Apology Act* has some limitations. As seen in recent court decisions, apologetic statements can be separated from statements of fact, and the latter can be admissible in court. This means that portions of an apology may still be admissible, despite the *Apology Act*.⁵

For example, a midwife may make the following statement to a client who is experiencing poor perineal healing after a laceration:

“I’m sorry my suturing technique failed and now you are healing so poorly. Because of my suturing, you now need to go get revision surgery. I feel awful and wish I had done a better job.”

In this example, based on recent case law, the court may admit the second sentence into evidence as a statement of fact, not apology. In this case, the statement could demonstrate evidence of liability, even though it was written or stated as part of a larger apology. For this reason it is important to check in with the MPP prior to offering an apology, and to document the apology carefully afterwards.

July 2018

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

January 2021: CMBC to BCCNM update (name change occurred September 1, 2020)

Published by the Midwives Protection Program

It should be clearly understood that this document and the information contained within is not legal advice and is provided for guidance from a risk management perspective only. It is not intended as a comprehensive or exhaustive review of the law and readers are advised to seek independent legal advice where appropriate. If you have any questions about the content of this Risk Note please contact the MPP at MPP@gov.bc.ca

³ *Apology Act*, [SBC 2006] c 19. Retrieved online at

http://www.bclaws.ca/Recon/document/ID/freeside/00_06019_01

⁴ BC Attorney General as cited in John C. Kleefeld (2007). *Thinking Like a Human: British Columbia’s Apology Act*. UBC Law Review 40:2 at 770.

⁵ *Cormack v Chalmers*, 2015 ONSC 5599; *Varga v Kondola*, 2016 BCSC 2406; *Robinson v Cragg*, 2010 ABQB 743