



Midwives Protection Program

RISK NOTE

SUBJECT: Midwives' Obligations for Registering Births

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All registered midwives (RM) carry the same responsibilities for registering births as other primary care providers. These general obligations are reviewed in this document. As well, advice is provided for handling questions regarding grey areas that may arise in unique situations.

General Reporting Obligations for Every Birth

Every primary care provider who attends a birth has a statutory duty to complete a Notice of Birth.¹ One must be completed, signed, and submitted within 48 hours of the birth to the Vital Statistics Agency.²

The Vital Statistics Agency matches the Notice of Birth to the Birth Registration form submitted by the parent(s). Together these two documents form the evidence required to complete the registration of every child in British Columbia (BC). Parents have 30 days to complete and submit their Birth Registration form.³

Are there exceptions to the duty to report a birth?

No. There are no exceptions to the duty to report a birth. The information is utilized for provincial statistics, data on maternal child health outcomes, and completing the child's registration.

How should I complete the Notice of Birth?

A handbook for completing the Notice of Birth can be found online through the [Vital Statistics Agency](#).⁴

Requests to Not Register a Child

My client does not want the child's birth registered. Can I agree with their request that I not complete the Notice of Birth?

No. Every attendant must complete a Notice of Birth, as outlined in the general obligations above.

¹ *Vital Statistics Act* [RSBC 1996] c 479 (VSA), s 2(1)

http://www.bclaws.ca/civix/document/id/complete/statreg/96479_01

² VSA, *supra*, s 2(5).

³ *Ibid.*

⁴ Current link: <https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/births/vsa052.pdf>

Review these legal obligations with your client, and reassure them that the Notice of Birth alone does not constitute registration of a child's birth, as registration requires being linked with a Birth Registration form submitted by the parent(s). You may also want to inform them of the many benefits of registering a child's birth, including receiving a Care Card number, and ability to gain a passport.

Lastly it is important to inform the parent(s) that as per the *Vital Statistics Act*, if a Birth Registration form is not completed, the agency's registrar may prepare one with the information from the Notice of Birth, outside of the control of the midwife or parents.⁵ Similarly, should the hospital staff have any reason to believe a provider will not submit a Notice of Birth, the hospital is required to submit one so you should not promise that one will not be completed for a newborn.⁶

Registration of Unattended Births

Can I complete the Notice of Birth for my client that had an unattended birth?

No. You cannot complete a Notice of Birth for a birth that you did not attend. From time to time, we hear of RMs who have clients that have an unassisted birth, despite having had prenatal or postpartum care with the RM. In this case, clients who birth at home unassisted may request that the RM complete a Notice of Birth on their behalf.

It is important to not sign any legal documentation that affirms the birth of a child that you were not in attendance of. In these cases, you can advise your client that in order to register their child's birth, they are required to complete a form [VSA 404B](#) "Unattended Birth Checklist",⁷ which includes completing the online Birth Registration form, submitting two statutory declarations attesting to the birth and to the birth parent, as well as submitting a variety of supporting documentation. Clients can contact the [Vital Statistics Agency](#) for assistance with this process.

Surrogates and Gamete Donors

It is important to have a basic understanding of the laws around surrogacy and establishing parentage in BC, in order to understand the midwife's role in completing the Notice of Birth.

Surrogacy and assisted reproduction are generally directed by two statutes: the federal [Assisted Human Reproduction Act \(AHRA\)](#),⁸ and the provincial [Family Law Act \(FLA\)](#).⁹ The *AHRA* sets the standards for the sale, donation, storage, and usage of donor gametes and the provision of surrogacy services. The BC *FLA* sets the standards for establishing parentage when assisted reproduction (AR) is utilized.¹⁰

In short, the midwife has no role in establishing the *parentage* of a child born of assisted reproduction with donors or surrogates involved. Your only responsibility is to complete the Notice of Birth with the information of the birthing person.

⁵ *VSA, supra*, s 3(2)

⁶ *VSA, supra*, s 3(1)

⁷ Current link: <https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/births/vsa404b.pdf>

⁸ *Assisted Human Reproduction Act*: <http://laws-lois.justice.gc.ca/eng/acts/A-13.4/FullText.html>

⁹ *BC Family Law Act*: http://www.bclaws.ca/civix/document/id/complete/statreg/11025_01

¹⁰ For more information please refer to *FLA* s 29 (surrogacy) and s 30 (parentage if assisted reproduction).

Who should be written in as the “birth mother” on the Notice of Birth – the surrogate or the intended parent of the child?

For the purposes of the Notice of Birth, the surrogate is the “birth mother” and should be recorded as such.

It is very important to note that the Notice of Birth does not establish parentage. It is purely a record of from whom the child was delivered, but does not in any way establish that person as the legal parent. The surrogate is, however, the initial legal parent of the newborn, as surrogates cannot give up legal rights to the child until *after* delivery. The intended parent(s) and surrogate should be aware, through their own legal counsel, how to affect the change of legal parentage status to the intended parent(s).

The intended parent(s) will also use the Birth Registration form to establish themselves as legal parents.

Does the method of completing the form change if the child was conceived using assisted reproduction such as a sperm, egg, or embryo donor?

No. As above, the only responsibility the midwife has is to complete the Notice of Birth with the *birthing person’s* information. The midwife does not have to recognize or change anything about their reporting in this circumstance.

When using assisted reproduction, the parent(s) will use the “long form” birth registration to identify the methods used, and who the intended parent(s) of the child are.¹¹ As such, it is their personal choice informed by laws which they should receive legal advice on, as to how they will record or identify donor(s).

Requests Regarding Sex or Gender Designation

My client has requested that I do not designate a sex or gender of their baby on the Notice of Birth, is that okay?

Not at this time. The Notice of Birth still requires a sex designation wherever possible.

Today, many people have expressed concern regarding the notion of a gender being assigned at birth, based on the visual assessment of genitals of a child. There is an emphasis placed on the difference of sex, determined physiologically, and gender, a person’s own sense of gender identity. While a person’s sex may be identified visually or chromosomally, a person’s gender is only known to themselves. Therefore, some parents may request that their child’s sex or gender not be recorded on legal certificates, in an effort to allow the child to discover their own gender as they grow.

However, at present, the BC government still recognizes a child’s sex on the Notice of Birth, parents Birth Registration form, and the subsequent birth certificate. In 2017, a child was the first to be granted a medical services card with a sex designation of U for “unknown”. However, to date, the *Vital Statistics Agency* has not provided a birth certificate without a sex marker.

Therefore, midwives are encouraged to continue to mark the sex of the child based on a visual genital assessment on the Notice of Birth. Clients who wish to not have it

¹¹ VSA, *supra*, s 3(1.1)

identified can be encouraged to contact the [Vital Statistics Agency](#) to discuss options such as not marking the sex on the Birth Registration form which they submit.

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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 Midwives Protection Program at mpp@gov.bc.ca.