



Midwives Protection Program

# **RISK WISE ANSWERS**

## **Complaints and Disciplinary Matters**

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### **Can a complaint about you to the BC College of Nurses and Midwives (BCCNM) originate from someone other than your client?**

While most complaints about client care will come from the client or their family they can also arise from other sources. Complaints can follow a departmental review, a quality assurance review recommendation or a direct report of concern from a midwifery colleague or other health care professional such as a nurse manager or obstetrician. Pursuant to the *Health Professions Act* the BCCNM has an obligation to protect the public and must treat all complaints seriously regardless of how the notice comes to its attention.

The Midwives Protection Program (MPP) is there to assist you in the event of a complaint so your best course of action is to notify MPP as soon as you are notified by the BCCNM of a complaint against you and to follow the advice given. Be aware delayed responses can be taken into account by the BCCNM in further actions, hence the importance of prompt notification to MPP, and giving priority to all required responses. Extensions of time to respond are sometimes permitted by the BCCNM, but these must be reasonable.

### **What is the limit to the amount of coverage available to you for a BCCNM complaint or disciplinary matter?**

MPP provides coverage for all Registered Midwives in BC in good standing with both the BCCNM and the Midwives Association of BC. It is also a condition of coverage that you cooperate fully with MPP and appointed legal counsel.

Coverage for complaint or disciplinary matters (investigations and proceedings) is subject to a \$100,000 limit per policy period. A policy period runs for one year from February 1st to January 31<sup>st</sup>. All reported incidents falling within the policy period are subject to the \$100,000 limit. This means that if there is more than one complaint to the BCCNM or if the BCCNM opts to investigate more than one case and if all of those

complaints or cases reviewed are fully investigated and proceed to hearing(s) it is possible the \$100,000 will not be sufficient to cover all of your legal expenses. In addition, any fines levied by the BCCNM against you and the BCCNM's legal costs of any hearing are not covered or paid for by MPP. Discussions or advice about privileging issues (unless directly related to the management of the complaint) are also not covered.

In most instances of a single complaint to the BCCNM during any policy period the \$100,000 limit will be more than adequate, even if hearings do take place. MPP increased the disciplinary coverage from \$50,000 on February 1, 2013.

Since the Program began in 2001 no midwife in BC has required financial assistance for a disciplinary matter beyond what MPP provides. Keep in mind that the majority of complaints are resolved by way of a Consent Agreement between the Midwife and the BCCNM, negotiated with the assistance of MPP-appointed counsel and fall well within the limit.

Do make sure your counsel has a chance to go over any Consent Agreement with you before you sign it, even if the terms look perfectly acceptable to you. And be sure to fulfil any terms you have agreed to within the time frame required to avoid further consequences, including any involvement with the BCCNM that MPP may not cover.

### **Who tracks the limit for the amount of coverage for a BCCNM complaint or disciplinary matter?**

MPP keeps track of the legal expenditure and will notify you in writing approximately half way through the limit with its best estimate of whether or not there will be sufficient funds in place. Where there is a strong possibility of multiple case reviews or hearing(s) of several weeks' duration you may be informed earlier on that the coverage limit could be problematic. If MPP and your appointed counsel are of the opinion the BCCNM may levy a fine or seek its legal costs for a hearing we will do our best to provide you with early warning of that possibility. If at any time you have any concerns about the amount of coverage available, you may wish to consider other funding options and discuss any funding or coverage concerns with the Midwives Association of BC or with your own legal counsel or business advisor.

### **Do the limits for disciplinary coverage differ from those for a claim of malpractice or negligence?**

Yes! MPP also provides liability coverage for claims of malpractice or negligence (generally brought against you by the client for any injury to themselves, or for injury to the infant by the parents of the infant, but in some instances by others' on behalf of the infant or by an infant who has reached the age of majority).

So far in Canada no obstetrical claim brought against any single practitioner or hospital has exceeded the \$15,000,000.00 MPP malpractice liability limit.

### **Are you ever obligated to report yourself to the BCCNM?**

There is no obligation to self-report a potential complaint to the BCCNM. There are many instances where dissatisfaction with outcome has not been in the midwife's control (e.g. hospital interventions were required where an otherwise planned home birth has not been able to proceed and the client is simply hospital, or medical model adverse) or where the dissatisfaction is transient or a misunderstanding clarified in follow-up visits (and de-briefing) or that fades in importance as the infant thrives. The *Health Professions Act* does require that you document errors, incidents and complaints and that you notify appropriate authorities and that you initiate restorative action (where possible). So far, the *Health Professions Act* has not been interpreted to mean every hint or suggestion of a complaint requires notice to the BCCNM.

### **Should you let your practice partner or other health care providers know of tensions with your client?**

It is appropriate to let your practice partner(s) know of any arising tensions with your client. In some circumstances it may also be appropriate to discuss a concern with the department head for quality assurance purposes (e.g. in a case where RN support was not forthcoming and the client was unhappy with overall tension or care in the delivery room). Consider the article "Case Communications and S. 51 reviews" (available on our website, [www.bcmpp.org](http://www.bcmpp.org)) and consult with MPP if in any doubt about quality review conversations or participation in a s. 51 review.

### **What are your obligations when your client fires you or refuses follow-up visits?**

Different obligations arise when a client fires you or refuses follow-up visits. In these circumstances you are absolutely required to follow the BCCNM's [Policy for Required Procedures for Midwife – or Client – Initiated Termination of Care](#) to use your best efforts to ensure appropriate referral and follow-up arrangements and these may include notifying the client's GP, the obstetrician, the paediatrician and the public health nurse that the client is no longer in your care. Provide sufficient detail of any anticipated follow-up problems e.g. elevated bilirubin, history of non-compliance with recommendations that could impact care, and cooperate with provision of copies of records to appropriate persons and in appropriate circumstances. Verify that FAXED records including lab requisitions have been received by the practitioner accepting care. You should avoid discussion of your interpretation of the reasons for firing or for service or follow-up refusal. For most practitioners the facts will speak for themselves.

Otherwise your former client may suggest you have tried to "poison" the relationship with the new provider.

You should notify MPP of a potential complaint and most certainly notify MPP if the client fires you or refuses care or if you receive an actual notice from the BCCNM of a complaint.

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