



College of
Midwives
of Ontario

Ordre des
sages-femmes
de l'Ontario

Guideline on Reporting Child Abuse

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Introduction

In the course of carrying out their duties within family environments, midwives may become aware of child abuse.

Midwives have a legal duty to report child abuse (including suspected child abuse) under the *Child, Youth & Family Services Act* (“CYFSA”).¹ The duty arises if the midwife has “reasonable grounds to suspect” abuse. The midwife does not have to definitely conclude that abuse has occurred. A failure to report can result in a fine under the CYFSA² and may be regarded as professional misconduct

¹ *Child, Youth and Family Services Act*, SO 2017, c 14, Schedule 1, at s 125(1).

² *Ibid* at s 125(9). The fine payable is up to \$5000.

³ O Reg 388/09 under the *Midwifery Act*, SO 1991, c 31. Failing to report may be considered disgraceful,

under the *Professional Misconduct Regulation* made under the *Midwifery Act*.³

The College’s Guide on Mandatory and Permissive Reporting⁴ outlines the legal requirements for reporting child abuse. The purpose of this guideline is to assist midwives in identifying abuse and to provide considerations for managing the process of making reports to the Children’s Aid Society (“CAS”).

The information provided in this guideline does not constitute legal advice and is not meant to exhaustively describe all instances of abuse that a midwife may encounter while practising the profession. Midwives are expected to use their judgment in assessing whether they have a duty to report.

If midwives are unsure about any of their reporting obligations, they should contact CAS for information or consult with a lawyer to obtain legal advice.

Definition of a Child

The CYFSA describes what should be reported to CAS, which includes actual or suspected physical harm to a child, emotional harm to a child, sexual abuse of a child, neglect of a child or risk of harm to a child.⁵

A child is defined as someone who is under the age of 16.⁶ However, if a midwife has reasonable grounds to suspect that a child who is 16 or 17 is in need of protection, a report may be made, even though it is not required.⁷

dishonourable or unprofessional conduct under s 47 of the Regulation.

⁴ (November 2019)

⁵ *Supra* note 1 at s 125(1). Also see the College’s Guide on Mandatory and Permissive Reporting.

⁶ *Ibid* at s 2(1).

⁷ *Ibid* at s 125(4).

A fetus is not considered to be a child under the CYFSA. Therefore, any concerns pertaining to a client's fetus are not reportable to CAS. However, at the time of birth, should a midwife be concerned about the risk of harm to the newborn child, a report must be made at that time. In such circumstances, a midwife should ensure that the number of their local CAS⁸ is readily available at the time of birth.

In addition, midwives are encouraged to sign up with their local CAS to receive alerts from CAS's watch list, which provides the names of pregnant individuals that might be clients and pose a risk of harm to a newborn child.

Recognizing the Signs of Abuse

A midwife may witness or become aware of various kinds of abuse and harm to a child, including the following:

Physical Abuse – the use of physical force that results in pain or injury. Examples include slapping, hair pulling, beating, burning, throwing objects, kicking, punching and cutting. Signs may include bruises, burns, bites and cuts.

Emotional Abuse – conduct that negatively affects a child's feelings and psychological functioning. Signs may include yelling, demeaning, ignoring, or exposing the child to domestic violence.

Sexual Abuse – conduct that may include sexual touching, exposure, sexual activity, harassment and exploitation. Signs may include witnessed inappropriate sexual activity or a report by the child of inappropriate sexual activity.

Domestic Violence – violent or abusive behaviour occurring within the family home that may involve a spouse or partner. Signs may include those listed above under physical and emotional abuse.

Neglect – failing to provide the child with basic necessities such as food, sleep, safety, supervision, clothing and certain kinds of medical treatment. Signs include unsanitary home environments and compromised child health due to intentional lack of feeding.

Possible Harm Noticed by Midwives

The following are some examples of harm caused to a child that midwives might hear about or witness:

Physically Disciplining a Child

Midwives may witness or hear about a parent or caregiver physically disciplining a child, such as spanking them. Depending on the circumstances, such conduct may need to be reported.

Generally, if the corporal punishment is minor, transitory and trifling, and does not physically harm or degrade the child, then it may be legal and may not require a report.⁹ If the corporal punishment causes harm (such as by leaving a mark), if an object is used (such as a belt) or if a child suffers a hard blow to the head, then it would warrant a report.¹⁰

Partner Violence

It is possible that a child can be affected by witnessing abuse, even if they are not being directly abused themselves. As the CYFSA requires reports pertaining to a child experiencing emotional harm, this

⁸ Check the Ontario Association of Children's Aid Societies' website (www.oacas.org) for your local children's aid society.

⁹ The nature of corporal punishment that would be legal vs. illegal was discussed in *Canadian Foundation for*

Children, Youth and the Law v Canada (Attorney General), [2004] 1 SCR 76.

¹⁰ *Ibid.*

would presumably include partner violence impacting a child.

Pregnancy of Clients Under 16 Years of Age

Midwives may provide care to clients who are under the age of 16 and therefore meet the definition of a child under the CYFSA. In such cases, the client may be the subject of sexual abuse and/or exploitation. Under the CYFSA, midwives are required to report if a child has been sexually abused or exploited by a person having charge of the child or where the person having charge of the child fails to protect the child. Midwives are also required to report a risk of such sexual abuse or exploitation.¹¹

If the midwife has reasonable grounds to suspect that a person having charge of the child, such as a parent or teacher, sexually abused the child, the midwife must report this to CAS.

In addition, there may be other situations where the pregnancy of a client under the age of 16 should be reported.

The age of consent to sexual activity in Canada is 16 years old.¹² However, a 14- or 15-year-old can legally consent to sexual activity as long as (1) the sexual partner is less than five years older than the client and (2) there is no abuse of a relationship of trust, authority or dependency, or other exploitation of the client.¹³ In cases where both these conditions are met, the midwife is not required to make a report.

If the sexual partner of a client who is 14 or 15 years old is more than five years older than the client, any sexual activity

between them is a criminal offence.¹⁴ If the sexual partner of a client who is 12 or 13 years old is more than two years older than the client, any sexual activity between them is a criminal offence.¹⁵ In these circumstances, a midwife must report to CAS.

In addition to making a report to CAS, it is recommended that a midwife discuss with the client whether the client wants to report to the police or wants the midwife to contact the police on the client's behalf.

Alcohol or Drugs Consumed During Pregnancy

Not all situations of a client consuming alcohol or drugs during pregnancy warrant a report to CAS. However, if a midwife becomes aware of a client abusing alcohol or drugs on a regular basis during pregnancy, it is recommended that the midwife consider reporting the conduct to CAS once the child is born.

In addition, prior to the child being born, the midwife should consider providing the client with a referral to social services for any addiction and mental health concerns.

Rejecting Newborn Treatment

Midwives must be cautious in respecting a client's right to make informed choices about treatments pertaining to their newborn. Pursuant to the *Health Care Consent Act*,¹⁶ clients have the right to reject certain treatments for their newborns. For example, a client may reject their baby receiving a vitamin K injection. This would not constitute

¹¹ *Supra* note 1 at s 125(1)3 and 4.

¹² *Criminal Code of Canada*, RSC, 1985, c C-46, at s 150.1(1).

¹³ *Ibid* at s 150.1 (2.1).

¹⁴ *Ibid*.

¹⁵ *Ibid*, at s 150.1(2).

¹⁶ *Health Care Consent Act*, SO 1996, c 2, Schedule A.

reasonable grounds for a midwife to make a report to CAS.

A midwife should only make a report to CAS where the midwife is of the view that the client's choices could harm the child.

In general, a midwife should consider:

- The severity of the newborn's health condition
- Whether there is a need for urgent intervention and treatment
- Whether or not receiving the treatment would cause physical harm to the newborn

Documentation of Concerns

Midwives should document the following information:

- If concerns pertain to physical abuse, document the appearance of injuries that are observed (including their shape, size, colour and the site of injury), and the time and date on which the injuries were observed
- If concerns pertain to other kinds of abuse, document the basis on which such concerns have arisen
- If documenting concerns pertaining to a child/young person that is not in the direct care of the client, document the name of the child/young person and the names of the parents or caregivers of the child/young person (if known)
- Document any conversations conducted with external organizations or with other caregivers, including the time and date on which these discussions occurred

Discussing Report with Client

If appropriate, a midwife should discuss their concerns and duty to report child abuse with a client prior to making the report to CAS. In determining whether or

not it is appropriate, a midwife should consider:

- Whether the client, child, or someone else will be put in danger by sharing the information
- Whether there is an immediate need to report due to a likelihood of imminent harm

If circumstances did not provide for informing the client in advance, a midwife should inform the client as soon as possible after making the report and consider discussing what is mentioned below with the client.

If a midwife chooses to have a discussion with the client prior or after making a report to CAS, they should consider:

- Establishing a private setting to have the conversation
- Arranging for additional support, such as additional staff or security, if a midwife feels unsafe for any reason
- Not sharing concerns in the presence of children
- Communicating their concerns and duty to report in a factual and non-threatening manner, for example "I have some concerns about your child being hurt that may need further investigation. I am required by law to report these concerns to CAS."
- Offering to contact CAS with the client present to demonstrate transparency on the part of the midwife and cooperation on the part of the client.
- Being clear that the midwife will continue to provide care to the client, unless the client wishes otherwise or the midwife has a reason to terminate care (e.g. feeling unsafe in continuing to provide care)

Documentation of Client Discussions

Midwives should document the following information:

- the content of the discussion, including the date and time and any decisions made (e.g. whether the client would like to call CAS with the midwife)
- if the client wishes to terminate care and, if so, the arrangements that are being made to secure alternative care

Making the Report to CAS

Once a midwife has decided to make a report to CAS and has discussed the decision with the client (if appropriate), the midwife should notify CAS and provide the following information:

- The name of the child
- The name of the parent(s)
- The address of the child's residence, if known
- The nature of the concerns, including the date and time on which instances indicating harm, abuse, neglect or risk of harm were witnessed or heard of¹⁷

Other information in the midwifery record that is not relevant to the child abuse should not be shared with CAS.

The midwife making the report should inform all other midwives providing care to the client about the report being made. They should also inform any health care provider that has primary responsibility of the client or newborn (such as a physician or pediatrician) at the time the report is made.

Midwives are also reminded that the fact of having made a report to CAS should be shared with the health care provider

assuming primary care of the client or newborn upon discharge of the client (e.g. a family physician or pediatrician).

Midwives should remember that their duty to report child abuse is ongoing.¹⁸ As a result, if any further information arises relating to the abuse reported (e.g. another occurrence of the abuse already reported or additional abuse), they are obligated to report it to CAS.

Documentation of Report to CAS

Midwives should document the following information:

- what was reported to CAS and the time and date on which the report was made
- any associated conversations had with the client
- any discussions had with colleagues pertaining to the matter

General Considerations for Documentation

In general, it is recommended that a midwife's concerns regarding child abuse, including associated discussions held with a client (if any) and the report to CAS be documented in the midwifery record. However, in certain instances, it may be appropriate to document this information outside of the midwifery record, such as when the client has an abusive partner and the midwifery record might be left at the client's home. In such cases, it is recommended that a written record of this information be kept securely at the midwifery practice and be added to the client's midwifery record once CAS is involved. The midwifery record should clearly indicate which sections were added, who added the sections and when the sections were

¹⁷ According to the CYFSA (*supra* note 1 at s 125(10)), the duty to report overrides sharing confidential or privileged information.

¹⁸ *Supra* note 1 at s 125(2).

added.

Conclusion

Given their role with families, midwives are in a unique position to identify the need for reporting and advocate for a child's welfare and protection and are accordingly encouraged to be perceptive of signs of abuse or harm.

Midwives are reminded that no legal action can be taken against a person for

making a report to CAS in good faith with reasonable grounds.¹⁹

College staff are available to provide information to assist the public, members, and practices in meeting mandatory reporting requirements. For more information about making a report, please e-mail the Professional Practice Advisor at practiceadvice@cmo.on.ca or call 616.640.2252 ext. 230.

¹⁹ *Supra* note 1 at s 125(10).



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