

ARE LIABILITY ISSUES A BARRIER TO MULTIDISCIPLINARY COLLABORATIVE MATERNITY CARE?

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On September 14, 2005 a panel of speakers deliberated with members of the National Primary Maternity Care Committee on the potential liability issues associated with multidisciplinary collaborative maternity care. The panel consisted of:

- Dr. William Beilby, Associate Executive Director and Managing Director, Risk Management Services at the Canadian Medical Protective Association (CMPA)
- Elaine Borg, BNSc, RN, LLB, Professional Liability Officer, Canadian Nurses Protective Society (CNPS)
- Eleanor Morton, Vice-president, Risk Management, Healthcare Insurance Reciprocal of Canada (HIROC)

Dr. William Beilby reviewed liability issues for obstetrician/gynaecologists. He reported that obstetrician/gynaecologists are four or five times more

likely to be involved in malpractice lawsuits than average. In 2004, 131 new legal actions were initiated against obstetrician/gynaecologists, representing one new legal action for every 12 obstetricians. Damage awards for obstetrical cases continue to become increasingly large and, as a result, the CMPA membership fee for obstetricians is higher than for all other medical specialties.

Dr. Beilby emphasized that health professionals should be working within their scope of practice and should understand the scope of practice of their fellow collaborative team members. Generally health professionals functioning within their scope of practice are responsible for their own actions. There are some circumstances that were presented by Ms. Borg where one professional can become liable for the torts of another team member. Dr. Beilby suggested that a collaborative care team establish policies and protocols to ensure that each practitioner works within their scope of practice. He also recommended that each team member should be required to maintain adequate professional liability protection.



Panelists discuss liability issues (l-r): Eleanor Morton, Dr. William Beilby, Elaine Borg and Michelle Kryzanasuskas

Ms. Borg focused on legal risk management issues. She stressed the need for professionals to identify that which is within their control and act on it. Evidence of a professional's reasonable actions will be essential if a practitioner is required to account for their practice in a legal proceeding.

She reviewed the objectives of tort law, which are to achieve justice, compensation for harm, education and deterrence of negligent acts. The

negligence analysis was described, along with the defence to an allegation of negligence, which is that the practitioner acted reasonably and prudently in the circumstances.

Ms. Borg also reviewed the three major types of liability, including:

- Direct liability: each health professional, both individually and as a member of the collaborative practice team, is accountable for his or her own professional practice
- Vicarious Liability: when an employee is found negligent, the court may order damages be paid by the employer pursuant to the legal doctrine of vicarious liability. An employment relationship must have existed at the time of the incident and the defendant employee must have been sued for work done within the scope of employment.
- Joint and Several Liability: when more than one defendant is found negligent, the court will assess the amount of damages to be paid by each defendant. The plaintiff may recover full compensation from one of these defendants. That defendant may then seek contribution from the other negligent defendants. For this reason, at the beginning of the work relationship and periodically afterwards, those in collaborative practice should verify that team members and institutions have professional liability protection.

Ms. Morton described HIROC's role as a reciprocal insurer of not-for-profit healthcare and related organizations, providing its member-owners with liability and property insurance. HIROC has focused on the provision of value-driven insurance to its members through the promotion of risk management and education, including its strong support of the SOGC's MORE^{OB} program. HIROC believes MORE^{OB} reflects the principles of working collaboratively, with its aim of replacing the professional hierarchy and its inherent risks, with a true team approach. HIROC is supportive of collaborative maternity practice and believes this will result in improved outcomes and improved patient satisfaction.

Key issues identified in HIROC claims are:

- poor or no documentation

- failure to monitor
- poor verbal and written communication
- failure to follow policy
- late entries
- missing records/monitor strips
- wrong counts (obstetrical sponges)
- potential "evidence" destroyed

The panelists agreed that the complexity of collaborative care has the potential to increase liability issues, especially involving communication. For this reason it is essential to establish transparent protocols and documented responsibility matching the scope of practice of each practitioner. A team will have to know who has the primary responsibility for the woman at any one time -- for example: if one member of the team consults an obstetrician regarding the potential for Caesarean section, the obstetrician must know if he is being consulted regarding the advisability of the procedure or if he is responsible for making the decision with the woman.

Another message from the panel is that, from a liability perspective, a collaborative team would not be a party in a lawsuit but the individuals comprising that team would be. Each mother must have a "most responsible" provider for each step along the way.

A multidisciplinary collaborative maternity care team must:

- Consider the legal issues common to all shared care arrangements and the legal issues unique to each arrangement
- Be familiar with the scope of practice, qualifications, experience and training of the other health care providers involved in the care of the patient
- Be familiar with any relevant guidelines or legislation if another health care provider is acting under your delegation
- Plan for your obligations as an employer (vicarious liability) when you employ other health professionals
- Ensure good communication between members of the health care team
- Make sure the woman understands the role of the health care team, and each team member's place in it.

AUTHOR BIOGRAPHY

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