Midwife, Ms E

Opinion - Case 98HDC20931

Complaint

The complainant, Mr A, complained about the standard of service Mrs B and her baby received from Ms E, midwife, on 14 August 1998. In particular, his complaint was that:

- *Ms E, a midwife, mismanaged the care of a baby born to an infectious hepatitis B carrier.*
- *The family had to remind Ms E on a number of occasions that the baby needed special care.*
- *At his birth on 14 August, the baby received only 2.5mcg of H-B-Vax II, half of the recommended dose and no HBIG.*
- *Mr A contacted Ms E for an explanation for not following the standards in treating the baby. Mr A was not satisfied with her responses.*

Investigation Process

The complaint was received on 17 November 1998 and an investigation was commenced on 9 June 1999. Information was obtained from:

Mr A	Complainant
Mrs B	Mother of the baby
Mr C	Father of the baby
Mrs D	Mrs B's mother
Ms E	Provider / Midwife
Mr F	Manager, Patient Care
Dr G	Community Health Services, Infectious Diseases

As part of the investigation, Mrs B's medical records, which include delivery details, were obtained from the public hospital and reviewed. Mrs B's antenatal and birth records were obtained from Ms E. The Commissioner obtained the advice of an independent midwife.

Opinion – Case 98HDC20931, continued

Information Gathered During Investigation

In 1996 the Ministry of Health published a 19 page information booklet for consumers titled "*Immunisation Choices*". The booklet contained information designed to inform parents of the benefits and risks of immunisation to assist them to make choices for their children. The booklet stated that the World Health Organisation and the Ministry of Health strongly recommended immunisation to protect children, and "*that risk from disease is far greater than the very small risk from immunisation*". The booklet discussed Hepatitis B as follows:

> "*Hepatitis B has been a common disease in New Zealand, particularly amongst Pacific Islands people and Maori. The number of people who have this disease has been gradually going down since hepatitis B vaccine was introduced in the 1980s. Hepatitis B is caused by a virus that attacks the liver and leads to fever, nausea, tiredness, dark urine and yellow skin (jaundice).*
>
> *Children who have the disease usually develop a very mild illness – sometimes they have no sign of illness at all. The illness itself is more serious for adults. However, children are more likely to become carriers of hepatitis B and there is a significant risk that they will develop liver disease and liver cancer later in life. An estimated 100 people who carry the virus die each year in New Zealand from these illnesses.*"

Mrs B was a known infectious Hepatitis B carrier.

Midwife, Ms E, informed the Commissioner that:

> "... [Mrs B] *was a known infectious Hepatitis carrier. Diagnosed initially by blood tests. When* [the baby] *was born, there were no known blood tests done to determine whether* [the baby] *was a hepatitis carrier or not. For one to assume is not only unprofessional but also dangerous to the wellbeing of the baby concerned.*"

Continued on next page

Midwife, Ms E

Opinion – Case 98HDC20931, continued

Information Gathered During Investigation *continued*

The complainant, Mr A, had been in contact with Mrs B during each of her pregnancies in regard to immunising each of her children. Mrs B's older son was part of a programme for the follow-up of children of known Hepatitis B carriers. Mr C and Mrs B had a good understanding of the need for their children to be vaccinated against Hepatitis B.

Ms E informed the Commissioner that:

> "*It may appear that* [Mr C and Mrs B] *had a good understanding of the need for their children to be vaccinated, it just seems that they did not have a good understanding of my practice. I am known to only practise traditional Maori birthing and feeding within my midwifery/Te Whaangai UU practise. This was one of the reasons the* […] *family sought my expertise. They were specifically told at their first consultation, the TIKANGA of my practice.*"

Mr A, in his letter of complaint, stated the following:

> "*… This baby was at extreme risk of infection by hepatitis B virus, and as such was expected to be given 5mcg doses of Merck Sharp and Dohme hepatitis B vaccine on four occasions beginning within a few hours of birth. The baby was also to receive hepatitis B immunoglobulin, at the same time as he should have received 5mcg of vaccine, as per immunisation standards 1996 (Ministry of Health immunisation hand books).*
>
> *We had alerted the baby's family before birth, of the urgency of the matter, and I have satisfied myself that they were aware of the problem and of the need to act ….*
>
> *Mismanagement* [of a baby born to an infectious hepatitis B carrier] *can result in infection, with a high possibility of the baby becoming a carrier. Male carriers (as was* [the baby]*) have a 35-40% lifetime risk of dying prematurely of HBV-related liver disease, either liver cancer or cirrhosis ….*"

Continued on next page

Midwife, Ms E

Opinion – Case 98HDC20931, continued

Information Gathered During Investigation *continued*

When Mrs B had her fourth pregnancy confirmed in January 1998, she contracted with Ms E, an independent midwife, for a home delivery. Ms E, as Mrs B's contracted midwife, was the lead maternity carer (LMC).

The term 'Lead Maternity Carer' refers to the general practitioner, midwife or obstetric specialist who has been selected by the woman to provide the woman with comprehensive maternity care including the management of her labour and birth. The LMC has prescribed responsibilities which are detailed in the provisions of section 51 of the Health and Disability Services Act 1993.

The notice issued under section 51 to midwives, clause 3.4.5.1.4: SERVICES FOLLOWING BIRTH, requires the midwife to provide:

> "*Newborn baby examinations, screening and follow up when required. This includes metabolic screening, hearing screening, and immunisation as appropriate (BCG, Hep B) (as outlined in National Well Child Schedule) and any other relevant screening programme purchased by the HFA.*"

The notice became effective on 1 March 1998.

The records show that Mrs B's first antenatal visit with Ms E was on 19 May 1998. Ms E recorded on Mrs B's antenatal records on 19 May 1998 that:

> "*Hep B vaccine – check baby before injection given.*"

Mrs B advised the Commissioner that she had informed Ms E that she wanted her baby vaccinated against Hepatitis B, as Mrs B was a Hepatitis B carrier and her eldest child had continuing problems as a result of not being vaccinated when he was a baby.

Continued on next page

Midwife, Ms E

Opinion – Case 98HDC20931, continued

Information Gathered During Investigation *continued*

Ms E informed the Commissioner that:

> "[Mrs B] *did mention the Hepatitis Vaccine that she wanted given to her baby. I mentioned to* [Mrs B] *the fact that successful breastfeeding can provide immunoglobulins to babies therefore preventing a lot of our common childhood sicknesses, one being hepatitis. If* [Mrs B] *was to do her homework, she will realise that there was a time when* [Mr A] *wanted to inject all Maori children with the hepatitis vaccine, one child being my daughter*."

Mrs B informed the Commissioner that:

> "*I have known that I was an infectious carrier eighteen years ago when my first son was born.*"

Mrs B said that her eldest son has been on a hepatitis programme for about the last 15 years. The programme to identify and immunise the children of Hepatitis B carriers was started in 1984 when the high incidence of this disease in the Maori population was identified. Mrs B stated that her eldest son has to have three-monthly blood tests to assess his liver function, which is not good. Mrs B said that because of this, and seeing how much her eldest boy has had to deal with, she was determined that the baby would not have to go through the same thing. Her other two children have been immunised and have no problems.

A child who has been diagnosed as a hepatitis B carrier is invited to enrol on the surveillance programme. Once on the programme children are seen yearly for blood tests to assess liver function, and depending on the results they may been seen as often as monthly. If the child's liver function becomes abnormal the programme will refer the child to a liver specialist for follow up care.

Mrs B said that she discussed all this with Ms E and thought that there were no problems. Mrs B said that her husband, Mr C, and the children came to every antenatal appointment she had with Ms E, so they all knew what was discussed.

Continued on next page

Midwife, Ms E

Opinion – Case 98HDC20931, continued

Information Gathered During Investigation *continued*

Mr C said that he had a conversation with Ms E about infectious hepatitis. Mr C said that he told Ms E he did not believe the "*infectious thing*". He said that he and his wife have had unprotected sex for years, and he was not infectious.

Mrs B said that she thought that Ms E decided after this conversation that she would not give the baby the vaccine. Mrs B said that she was really angry, because Ms E should have checked with her before making this decision.

Mrs B went into labour on 14 August 1998. Mrs B informed the Commissioner that her:

> "*labour started about 10.00am. I rang* [Ms E, midwife] *who said that she had visitors, and would get round as soon as she got rid of them.*"

Mrs B said that she remembered reminding Ms E about the vaccine, and Ms E said that she would have to pick it up from the hospital. Mrs B said that her waters broke very quickly, not something that usually happened. She said that she usually had to have the waters broken for her. Mrs B said that she started pushing straight away.

Mrs B said that Ms H, a registered nurse friend from work, was with her. Ms H was worried and asked Mr C to call the doctor, because the birth of the baby seemed imminent. Mr C said that he had just rung the doctor at about 12.00 midday when Ms E arrived. Mrs B said that she gave another two pushes and the baby was born. Mrs B said that she was very breathless, but told both Ms H and her son "*don't forget baby's injection*". Mrs B said that the labour and delivery were fine, the best she had ever had.

Mrs B's Labour Record, dated 14 August 1998, recorded that the hepatitis B vaccine was given to the baby at 1400hrs (2.00pm).

A vaccine label attached to the infants record form of 14 August, indicated HEPATITIS B r-DNA VACCINE INJECTION 2.5microgram BATCH:V7045 EXP DEC 1999 as the dose given.

Continued on next page

Midwife, Ms E

Opinion – Case 98HDC20931, continued

Information Gathered During Investigation *continued*

Mrs B informed the Commissioner that the placenta took a long time to come away. Mr C told the Commissioner that Ms E was pushing on Mrs B's stomach "*for about an hour*". He said that finally Ms E sat Mrs B on the edge of the bed, and pulled hard on the cord to make it come away. Mrs B said that afterwards she was breathless and feeling "*not right*". She said that she was bleeding a lot, and went into the bathroom for a wash, and collapsed in the bathroom.

Mrs B said that the next day she was feeling 'not good' and she was still bleeding a lot. Mrs B said that she told Ms E how she was feeling, and that Ms E told her that it was her age and the fact that she had just had her fourth baby. Mrs B said that she could not get out of bed which was not like her, and when she did, Mr C had to carry her. Mrs B said that Ms E came in every day and felt her stomach and told her everything was okay.

Mrs B said that on the third day after the birth on 17 August 2000, she was feeling so bad that she thought that if she got out of the house she might feel better. She and her husband went into the city in the car, and decided that as they were there they would see Mrs B's general practitioner. Mrs B said that her general practitioner telephoned the public hospital and admitted her for a blood transfusion.

Continued on next page

Midwife, Ms E

Opinion – Case 98HDC20931, continued

Information Gathered During Investigation *continued*

Ms E informed the Commissioner that:

> "*On the third day I tried to make contact with* [Mrs B] *only to find out that* [Mrs B] *had gone into town.* [Mrs B] *told me that she had felt faint and this was the reason they visited* [Dr I's] *surgery.* [Dr I] *did inform me of his findings which I was already aware of. Women do bleed after the birth of their babies and yes their haemoglobin does decrease. With a decreased haemoglobin women are advised to rest, and eat well.* [Dr I] *did not consider her anaemia to be life threatening but did mention the preferred treatment, a blood transfusion to spontaneously treat the anaemia. I visited* [Mrs B] *in hospital. She asked my advice re the blood transfusion and my reply was that I thought it was in her interest to allow them to give her a blood transfusion. My reason for this decision was that I had personally experienced blood transfusions myself as I am a post Bone Marrow transplant recipient.* [Mrs B] *agreed and within twenty-four hours her haemoglobin had increased as expected.* [Mrs B] *and her baby were admitted under the care of the hospital* […]."

Dr I, Mrs B's general practitioner, wrote to the public hospital, Maternity Annex, on 30 September 1998 requesting information about the baby's immunisation status. Dr I stated:

> "*... I understand according to the Midwife that the small child* […] *was given Immunoglobulin while in the annex. His mother is a Hepatitis B carrier and I understand that the Immunoglobulin was given at the time he was in the annex and not at birth. There was a delay of some five days.*
>
> *It is not documented in his Plunket book whether in fact he received the Immunoglobulin and I would be grateful if you could check the records to ascertain us. It is obviously a critical issue in a small child born to a mother who is a Hep B carrier.*"

Continued on next page

Opinion – Case 98HDC20931, continued

Information Gathered During Investigation *continued*

Ms J, Co-ordinator at the public hospital, replied to Dr I on 20 October 1998 and stated:

> "*There is no documentation in* [the baby's] *notes/*[Mrs B] *(mother) to suggest or confirm Immunoglobulin was given while in the Annex. The staff caring for* [the baby] *do not recall any being given. The laboratory has no record either.*
>
> [Ms E]*, Midwife at delivery, was in the Annex on 6 October when I asked her if she had given Immunoglobulin to* [the baby]. *She said yes. I said 'You have only written up vaccine'. I suggest maybe* [Ms E] *can verify whether both vaccine and Immunoglobulin were given.*"

Ms E stated the following in her response to the Commissioner:

> "*The follow up care for* [the baby] *was discussed between his family and myself. This is known as informed consent.* [The baby] *did receive only 2.5mcg of HB Vax II. At least* [Mr A] *has something right about the care of* [the baby]. *No HBIG was given to* [the baby]*, WHY because this baby was being successfully breastfed therefore receiving all the immunoglobulins from his mother's breastmilk.* [Mr A] *did ring me seeking an explanation for this dereliction of duty as stated in his letter dated 09-11-1998. I did tell* [Mr A] *that the baby was being SUCCESSFULLY BREASTFED which he felt was irrelevant.*"

Ms E informed the Commissioner that:

> "*I clearly documented that* [the baby] *had only been given one hepatitis vaccine. The immunoglobulin had been given to* [the baby] *via his mother's breastmilk.*"

An independent midwife advised the Commissioner that when a hepatitis B carrier mother requests the midwife to vaccinate her baby against hepatitis B, and the midwife is unsure of the current protocols for vaccinating the baby, it is standard practice for the midwife to consult with the mother's general practitioner for guidance.

Continued on next page

Midwife, Ms E

Opinion – Case 98HDC20931, continued

Information Gathered During Investigation *continued*

Standards for Immunisation Services

The Ministry of Health's document '*Standards for Immunisation Services*', published by the Ministry in 1996 to assist providers of immunisation services in New Zealand as part of the Ministry's National '*Well Child Care Programme*', advised that babies born to mothers who are known infectious hepatitis B carriers are at extreme risk of infection by the hepatitis B virus. The Ministry of Health recommended that these babies:

> "*... born of carrier mothers require HBIG* [immunoglobulin, which is an antibody] *and an extra dose of* [hepatitis] *vaccine ...*".

The Ministry of Health '*Standards for Immunisation Services*', further stated:

> "*2.5 Recommend immunisation schedule*
>
> *Three doses of hepatitis B vaccine are recommended at the ages of six weeks, three and five months.*
>
> *...*
>
> *As from 1 December 1989 the plasma derived vaccine (H-B-Vax) was replaced by a genetically engineered recombinant vaccine (Engerix-B). This was given at the manufacturer's recommended dose at six weeks, three months and 15 months. Babies of carrier mothers also received a dose of vaccine plus HBIG at birth. ...*
>
> *The summary outlines the manufacturer's recommended dosage for the vaccine in current use (HB-Vax II, MSD). The vaccine used may change each time there is a new tender, about once every 12 to 18 months. The decision to change vaccines is made predominantly on the ground of cost. A change of vaccine may lead to a change in the dosage administered.*
>
> *...*

Continued on next page

Opinion – Case 98HDC20931, continued

Information Gathered During Investigation *continued*

Administration

…

It is wise to have both vaccines drawn up at the outset because two injections are given at each scheduled visit. This reduces the distress for the child and the caregiver. …

Hepatitis B immunisation is recommended and publicly funded for the following groups:

(a) Infants born to carrier mothers (ie, HbsAg-positive women). A double dose of hepatitis B vaccine plus HBIG 100 IU are offered at birth, each given by separate injections in different limbs. …

HBIG should be administered as soon as possible after birth, preferably within 12 hours. If administration is inadvertently delayed, giving HBIG up to seven days after birth is still of value. The hepatitis B vaccine schedule should be commenced within the first week of life, but is normally given at the same time as HBIG (separate syringe and site). All women should be tested for their HbsAg status during the antenatal period. If their status is unknown, the infant should be given IG at the time of delivery while the result of an urgent HbsAg test on the mother is awaited. If she is found to be HbsAg-positive, the infant should then be immunised forthwith using the double dose of vaccine.

…

Infants born to carrier mothers (ie, HbsAg - positive women), HBIG should be administered as soon as possible after birth, preferably within 12 hours of birth. …

Vaccine dosage

Three doses separated by at least one month intervals.

…

Infants of HbsAg positive mothers 5ug*

Continued on next page

Midwife, Ms E

Opinion – Case 98HDC20931, continued

Information Gathered During Investigation *continued*

…
**Infants of HbsAg positive mothers also need 100 IU of HBIG within 12 hours of birth and a fourth dose of only 2.5ug is recommended.*"

Ms E informed the Commissioner that:

"…

[Mrs B] *had never successfully breastfed her other three children. It was not only time consuming but also stressful for me as we had to undo all the bad habits that* [Mrs B] *had conditioned herself into believing was right. When babies are not being successfully breastfed, one of our indicators is jaundice, concentrated urine (dark urine), vomiting and fever.*

[Mrs B] *had experienced the above signs and symptoms with her other three children.*

I was aware that [Mrs B's] *oldest son,* […] *was …* [in the] *hepatitis programme.* [Mrs B] *rang me one day and asked my opinion regarding* [the] *programme. Her enquiry was whether it was okay for* [the programme leader] *to remove a small portion of* [her son's] *liver for research purposes. My reply was, 'he is your son but if he was mine I wouldn't allow this procedure to go ahead'.*

Women who choose to smoke throughout their pregnancy do feel breathless and not right. [Mrs B] *had been informed of the consequences she would encounter if she chose to smoke heavily throughout her pregnancy. I visited* [Mrs B] *the day after* [the baby] *was born and gave her and her husband strict instructions that* [Mrs B] *needed to rest and eat foods rich in iron, one being Kina (sea eggs).* [Mr C] *was supportive to his wife and family throughout my entire communications/visits with them.*

Continued on next page

Midwife, Ms E

Opinion – Case 98HDC20931, continued

Information Gathered During Investigation *continued*

[Ms J] *no longer works at the* […] *Maternity unit. I called the Maternity Advisory Committee of New Zealand to assist me with obtaining access into the* […] *Maternity unit as I was being denied access on the grounds of incorrect and inaccurate statements that* [Ms J] *had made against me. Families and health professionals attended the meeting. The outcome was that* […] *were advised to give me access as denial of access was having a detrimental effect on the mothers who were under my care at that time. To this day I still have no access into this maternity unit ….*

In my opinion I do not feel that I breached Rights 4(1) and 4(4) of the Code of Rights. I believed that my professional practice was never taken note by the […] *family from day one.* [Mrs B] *did not believe me that the immunoglobulins that are present in her breastmilk would protect* [the baby] *from contracting hepatitis. There has been not one mention that when* [the baby] *had a blood test to determine his blood picture* [the baby] *was Hepatitis NEGATIVE.*

Hepatitis negative – (has an immunity to hepatitis and yet he was born from a known infectious hepatitis carrier). Breastmilk was given as breastmilk also contains immunoglobulins.

Actions; When I handed [Mrs B's] *notes over, I enclosed a personal letter written by me to her family, apologising for not giving* [the baby] *their preferred vaccine and immunoglobulin.*

I have learned valuable lessons from this past experience.
LESSON ONE: I have now chosen never to take on mothers who choose to smoke throughout and after their pregnancies and birth.
LESSON TWO: The benefits of successfully breastfed babies is limited amongst our health professionals and the wider community here in New Zealand.

Continued on next page

Midwife, Ms E

Opinion – Case 98HDC20931, continued

Information Gathered During Investigation *continued*

I will allow Nga Maia o Aotearoa me Te Waipounamu (Maori Midwives of New Zealand) to review my practice, re competence review. I have informed our organisation of this case. I have in the past represented our Maori Midwives of New Zealand on the New Zealand College of Midwives. Te Whaangai UU is known throughout both of these organisations.

I believe that the best interests of this whanau were taken into account. I have since seen [Mrs B] *and her children. The baby was happily playing with a netball at the* […] *netball courts.* [Mrs B] *showed no signs of prejudice towards me but came to greet me when she saw me.*

I now reside in [the city] *during the week and return to the* [valley] *in the weekends. I no longer practise the labour and birth of midwifery. I now provide a Te Whaangai UU specialist service at THE CLINIC in* [the suburb]. *(Te Whaangai UU is a successful breastfeeding professional service from a Maori perspective.)*

… This time consuming experience has definitely taught me valuable lessons. I now know how to prevent further incidences like this occurring. …"

Code of Health and Disability Services Consumers' Rights

The following Rights in the Code of Health and Disability Services Consumers' Rights are applicable to this complaint:

RIGHT 4
Right to Services of an Appropriate Standard

1) Every consumer has the right to have services provided with reasonable care and skill.

…

4) Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.

Midwife, Ms E

Opinion – Case 98HDC20931, continued

Opinion: Breach Midwife, Ms E

In my opinion midwife, Ms E, breached Rights 4(1) and 4(4) of the Code of Rights in the following respects:

Right 4(1)

The baby was entitled to have health services provided to him with reasonable care and skill. In my opinion Ms E did not fulfil this legal duty.

Babies born to mothers who are known to be infectious Hepatitis B carriers are at extreme risk of infection. The chronic carrier state is more frequent after infection in infancy, with an incidence rate of 90%. Male carriers have a 35% to 40% life time risk of contracting active hepatitis and dying prematurely from cirrhosis (liver disease) or liver cancer.

Mrs B was aware of her status as an infectious hepatitis B carrier and the potential consequences for her baby. She specifically advised Ms E that due to her positive Hepatitis B status she had made an informed choice that her baby was to be vaccinated to prevent it getting hepatitis B. She drew to Ms E's attention to the importance of this on several occasions, including just before and just after her baby was born. Ms E noted this discussion in the antenatal records.

As Mrs B's LMC, responsible for the baby's appropriate immunisation, Ms E had a responsibility to ascertain and provide the correct immunisation.

The Ministry of Health standards for babies at extreme risk of infection, like the baby, recommended a double dose of hepatitis B vaccine and hepatitis immunoglobulin to be given within 12 hours of birth.

The records show that Ms E gave the baby a single dose of hepatitis B vaccine at 2.00pm on 14 August 1998, one and a half hours after his birth, and no hepatitis immunoglobulin. Ms E confirmed this to the Commissioner.

Continued on next page

Midwife, Ms E

Opinion – Case 98HDC20931, continued

Opinion: Breach Midwife, Ms E *continued*

In my opinion, in failing to administer a double dose of the hepatitis vaccine and the required immunoglobulin, Ms E, failed to exercise reasonable care and skill, and accordingly breached Right 4(1) of the Code.

Right 4(4)

By not immunising the baby correctly, Ms E potentially exposed him to a significant risk of contracting Hepatitis B and the long term effects of this disease. Ms E knew, or should have known, of the significant potential harm to the baby that could occur if he was not correctly vaccinated. In failing to provide services in a manner that minimised this potential harm, in my opinion Ms E breached Right 4(4).

Midwife, Ms E

Opinion – Case 98HDC20931, continued

Actions

I recommend that midwife, Ms E, takes the following actions:

- Meets with Mrs B (if Mrs B is prepared to do so) and apologises to her for breaching the Code. The outcome of this meeting is to be reported to the Commissioner.
- Participates in a competence review undertaken by the New Zealand College of Midwives Review Committee.
- Reviews her practice in relation to information disclosure to consumers.
- Reviews the current Ministry of Health Immunisation Standards (1996).

Other Actions

- A copy of this opinion will be sent to the Nursing Council of New Zealand, the Health Funding Authority, the Director of Public Health and the Nga Maea Maori Midwives Collective.
- A copy of this opinion will be sent to the New Zealand College of Midwives with a request that they undertake a review of Ms E's competence to practise midwifery.
- A non-identifying copy of this opinion will be sent to the New Zealand Office of the Australasian Faculty of Public Health Medicine and to the Public Health Association, for educational purposes.

Director of Proceedings

This matter will be referred to the Director of Proceedings in accordance with section 45(f) of the Health and Disability Commissioner Act 1994.