

**A Decision by the
Deputy Health and Disability Commissioner
(Case 21HDC01363)**

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Introduction

1. This report is the opinion of Rose Wall, Deputy Health and Disability Commissioner, and is made in accordance with the power delegated to her by the Commissioner.
2. The report discusses the care provided to a woman by a then registered midwife.
3. The following issues were identified for investigation:
 - *Whether the care provided to the woman by the midwife in 2020 was appropriate.*
 - *Whether following receipt of the woman’s complaint, the midwife complied with Right 10(3) of the Code of Health and Disability Services Consumers’ Rights.*

Background

Complaint events

4. In 2020, the woman went into labour with her first child. She told HDC that she was labouring at a clinic with her midwife. The woman said that she was not overdue, and in fact this was several days prior to her due date.
5. The woman said that during her normally progressing labour, the midwife told her that she was going to check how dilated she was. The woman stated that this check was a painful procedure. The midwife then told her that as well as the examination, she had done a

‘stretch and sweep¹ so that should ramp up the contractions’. The woman said that this was done without her knowledge or consent. No one else was present in the room.

6. The woman was not given a copy of her birthing notes but did have a copy of her birth plan (undated), which she provided to HDC. She said that the midwife gave her a birth plan template to complete, and then the midwife took a photocopy of the completed plan.
7. The birth plan outlined that should the woman go past her estimated due date, she would like to try natural methods before using drugs to induce labour. The woman did not tick the box for ‘sweeping of the membranes’ as one of the methods available, and added handwritten in this section: ‘Really, really would prefer not to be induced.’
8. The woman told HDC that her birth plan expressly outlined that she wished to have no intervention in her birth unless absolutely medically necessary, and that she would like to be given time to consider any procedure before it happened. She stated:

‘This was a physical assault on my body, the most intimate part of my body and in one of the most vulnerable experiences of a person’s life. It was done unnecessarily and without my knowledge or consent and was treated more as a “routine” part of labour that my midwife could use [at] anytime due to her position of knowledge and power.’

9. The woman said that she has experienced nightmares and trauma symptoms following the events.

Attempts to contact midwife

10. The midwife has to date not responded to the concerns raised by the woman.
11. The midwife was asked to provide information to HDC on 30 June 2021, 22 July 2021, 10 August 2021, 18 August 2021, 15 March 2023, and 20 March 2023.
12. The midwife provided two responses to HDC, on 16 March and 20 March 2023. In these she outlined her intention not to respond to the complaint. She stated that she is no longer practising as a midwife and used offensive language.

Response to provisional opinion

13. The woman was provided the opportunity to respond to the ‘information gathered’ section of the provisional opinion and had no comments to make.
14. The midwife was provided the opportunity to respond to the provisional opinion on 9 May, 31 May, and 12 June 2023. The midwife chose not to review or comment on the PO.

¹ A ‘stretch and sweep’ is a procedure in which the midwife, while doing a vaginal examination, sweeps a finger around the opening of the cervix to separate the membranes from their attachment to the cervix, in an attempt to stimulate contractions.

Opinion: Midwife — breach

15. As a healthcare provider, the midwife was required to provide the woman with information that a reasonable consumer, in that consumer's circumstances, needed to make an informed choice or give informed consent. In addition, the midwife was required to facilitate the fair, simple, speedy, and efficient resolution of complaints.
16. With respect to the issue complained about, it is evident that a 'stretch and sweep' is considered an invasive procedure that requires discussion with the woman/birthing person and their consent to it. Relevant standards for midwifery practice outline the competency required of a midwife to work in partnership with the woman/wahine/birthing person, including respecting their needs to be self-determining in promoting their own health and wellbeing,² and that it is the midwife's professional responsibility to uphold each woman's right to informed decision-making throughout the childbirth experience.³
17. The midwifery standards also suggest that the 'membrane sweep' procedure is something that should be 'offered' to a woman/wahine/birthing person, and that clinicians need to support them to make informed and shared decisions about their care.⁴
18. In the absence of any evidence from the midwife countering the woman's recollection (outlined above), I accept the woman's account and consider that there was inadequate information provided prior to the stretch and sweep being undertaken, and, more specifically, that the midwife undertook the procedure without the woman's consent. I note also that it is clear from her birth plan that the woman specifically did not want this procedure to be undertaken, and this was not something she had consented to earlier.
19. I therefore consider that the midwife failed to provide the woman with information that she needed in her circumstances to give informed consent and find that the midwife breached Right 6(2) of the Code of Health and Disability Services Consumers' Rights (the Code). Accordingly, it follows that the midwife, by undertaking the 'stretch and sweep', provided services without the woman's consent, and therefore also breached Right 7(1) of the Code.
20. As outlined above, the midwife has failed to provide HDC with information relevant to its assessment, or a response to the woman's concerns. The midwife's responses have only confirmed her intention not to engage with HDC's process. The language used in her responses was not only inappropriate but highly offensive. Her behaviour throughout this process has been a discredit to the midwifery profession, and I am critical of her failure to engage with the process and to provide resolution and closure of the concerns for the woman, who remains affected by the events.

² Midwifery Council of New Zealand, 'Competencies for entry to the Register of Midwives'. Wellington: Midwifery Council of New Zealand (2007).

³ New Zealand College of Midwives, 'Consensus Statement: Informed Consent and Decision Making' (2016).

⁴ Ministry of Health, *Induction of Labour in Aotearoa New Zealand: A clinical practice guideline 2019*. Wellington: Ministry of Health (2021).

21. In my view, the midwife has not facilitated the fair, simple, speedy, and efficient resolution of the complaint, and therefore I also find her in breach of Right 10(3) of the Code.

Recommendations

22. I recommend that the midwife:
- a) Provide a written apology to the woman, within three weeks of the date of this report.
 - b) Should she return to practice, undertake training on informed consent and complaint management.

Follow-up actions

23. A copy of this report with details identifying the parties removed will be sent to the Midwifery Council of New Zealand, and it will be advised of the midwife's name.
24. A copy of this report with details identifying the parties removed will be sent to the New Zealand College of Midwives and placed on the Health and Disability Commissioner website, www.hdc.org.nz, for educational purposes.

Addendum

25. The midwife did not comply with the Deputy Commissioner's recommendation to provide the woman with a written apology and has not responded to the Health and Disability Commissioner's further attempts to contact her.