

Standards of practice regarding home births in Australia

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This article comprises an overview of the proceedings by the Health Care Complaints Commission of NSW against independent practising midwife Margaret Lecky-Thompson before the Nurses Tribunal of NSW in light of recent alarming statistics of excess homebirth mortality in Australia.

Introduction

A recent article published in the *British Medical Journal* has drawn attention to a longstanding problem regarding standards of care applicable to home births in Australia. On the statistics, the Australian home birthing experience highlights an alarming trend towards the abandonment of risk assessment of potentially complicated deliveries which would otherwise be contraindicated for homebirth in various European countries including the Netherlands, where 30% of births occur at home.

The article referred to is that by Bastian, Keirse and Lancaster, in "Perinatal death associated with planned home birth in Australia: population based study", (*BMJ* Volume 317, 8 August 1998; pp. 384 - 388), in which the authors reported upon the results of their assessment of the risk of perinatal death in planned home births in Australia.

The design of the assessment was a comparison of data on planned home births during the period 1985 to 1990, notified to the organisation Homebirth Australia, with national data on perinatal deaths and outcomes of home births internationally.

The authors concluded that Australian births during the above period carried a high death rate compared with all Australian births and with home births in other parts of the world. The largest causes of the excess mortality were found to be:

- under estimation of the risks associated with post-term birth;

- twin pregnancy;
- breech presentation; and
- a lack of response to foetal distress.

These findings reflect the very real need to impose minimum standards of practice in relation to home births in Australia.

Midwife is held to account before the Nurses Tribunal of NSW

Pertinent to this issue are proceedings which were conducted in September 1996 by the Health Care Complaints Commission of NSW against independent practising midwife, Margaret Lecky-Thompson, before the Nurses Tribunal of New South Wales. The allegations against Ms Lecky-Thompson were that she has been guilty of "professional misconduct" in relation to 6 separate complaints against her. The closing addresses were made to the Tribunal in late March 1997 and at the time of writing, the decision in relation to these proceedings remains outstanding.

The Tribunal comprised of 2 Registered Nurses/Midwives, a lay member, and the chairman Mr Irving Wallach, a practising barrister.

The Health Care Complaints Commission of NSW, (formerly known as the Complaints Unit of NSW) is responsible for public investigation into allegations of professional misconduct on the part of health care professionals.

Ms Lecky-Thompson is an independent midwife who became a Registered Nurse in New South Wales in 1969. She received her authority to practice as a midwife in 1970. Since that time she has worked at such hospitals as the Royal Hospital for Women in Paddington. She commenced practice as an independent midwife in 1978 and (as at September 1996) claimed to have delivered just under 1000 babies safely at home.

Ms Lecky-Thompson is a long-time advocate of women's right to have a nat-



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ural home birth as an alternative to the perceived constraints on the patient's decision making process, allegedly inherent in the hospital system. "Maggie" Lecky-Thompson has been seen by some as a pioneer of the home-birth movement, both in NSW and the rest of Australia. She is the founding member of the Australian Society of Independent Midwives and the Midwives Academy. She is also a Fellow of the Australian College of Midwives. She said in evidence:

"Many people choose me as their home-birth midwife because I work in a setting in which birth is seen as a social event rather than a medical one."

The Health Care Complaints Commission was represented by Mr David Harris, an in-house solicitor at the Commission, Mr Mark Lynch, Junior Counsel, and Mr John Basten, Queen's Counsel. Ms Lecky-Thompson chose to represent herself in the proceedings.

A suppression order has been made to the effect that the names of the complainants, their families and factual witnesses before the tribunal, must not be published. They have been referred to as "Patient 1", etc, in accordance with each of the six complaints.

As stated earlier, the allegations against Ms Lecky-Thompson are that she has been guilty of "professional misconduct" in relation to each of the six complaints. If such a finding is made by the Tribunal, Ms Lecky-Thompson could lose her right to practise as a midwife.

Ms Lecky-Thompson's response

The gravity of the charges against her are such that much media attention has been attracted to the present proceedings before the Nurses Tribunal.

In an address to the Tribunal made in response to the opening of the HCCC's case, Ms Lecky-Thompson stated that:

"The nature of these complaints raises more than the issue of misconduct by a single practitioner. The formulation of these complaints indicates a focus on the types of births which ought to be managed by an independent midwife."

Speaking on ABC Radio National on the segment "Women Out Loud" in October 1995, Ms Lecky-Thompson has argued that these were shortcomings in the hospital system. She claimed that there

"are women who don't feel safe in a hospital environment, who don't get a chance of having their babies normally... and if we can't provide that in our NSW hospitals then our system sucks, our system is not serving women in the community and I, as a very experienced midwife, feel a strong responsibility to support those women to have natural births."

In response to complaints raised in the proceedings before the Tribunal that Ms Lecky-Thompson should not have undertaken the delivery of "high risk" births in the home, she said:

"Some people would see them as high risk and I see these women who have higher needs, they have more needs of a midwife. Whether they choose to stay at home or choose to be in a hospital, these are women who need a great deal of care... These women who are carrying twins and breeches for the most part, have just as much right to having the aspiration for a normal birth of their babies as any other women."

Ms Lecky-Thompson has denied that the injuries and deaths to the mothers and/or babies referred to in the complaints before the Tribunal were caused by any misconduct on her part. She has argued that morbidity and mortality in the birth process are facts of life and wholly unconnected with the standard of attending healthcare:

"Babies die in all kinds of environments. They die in the back seats of cars going to hospitals sometimes, they die in hospital labour wards, they die in birth centres and they die at home."

The view of the HCCC

Contrary to this view, the HCCC have sought to argue that this approach by Ms Lecky-Thompson to her patients has been central to the cause of the situations they now face. In each of the six

complaints before the Tribunal, the HCCC has adduced expert evidence to show that, had each patient been afforded the proper standard of care in each circumstance, their injuries and deaths could have been avoided.

The HCCC does not contend that the instance of home births *per se* was the main contributing factor to the adverse outcomes. Notwithstanding the policy statements from the Australian Medical Association and the Royal Australian College of Obstetricians and Gynaecologists which oppose the practice of midwifery undertaken independently of medical practitioners appropriately trained in Obstetrics, the HCCC has taken a different view.

From the outset, the Health Care Complaints Commission has supported the right of women to give birth at home and has advocated the need for the upholding of safe standards of practice in the homebirth movement.

In his opening speech to the Tribunal, Mr Basten, Q.C., made the following statements:

"There is not and never has been any legal limit on where midwifery may be practised, and there is certainly nothing illegal, or indeed frowned upon by the law as such, in relation to home births. Nor should there be, according to the Commissioner in this case."

In foreshadowing claims that the HCCC proceedings against Ms Lecky-Thompson have been motivated by a perceived medical intolerance by obstetricians and gynaecologists who may see her practice as a threat, Mr Basten stated unequivocally that:

"These complaints are directed squarely at issues of public safety in a particular area of the operation of health workers. The number of midwives attending more than 30 homebirths a year, across the whole country, appears at the present time to be something less than ten..."

"Against that background it may well be that independent midwives see themselves as a small and perhaps undervalued group of professional workers, and they may think their plight is due in part to the inappropriate attitudes of medical practitioners. The truth of that picture is not in issue in these proceedings, for statistics, and in any event, the Commission would say, doesn't excuse any failure to maintain professional standards on

the part of any individual midwife.

"The willingness of the Commission to act where minimum standards appear not to be met is an important protection not only for those women choosing to deliver at home, but also for the future of homebirths, as an option for women in appropriate circumstances."

The complaints

Patient 1

P1 was a 38 year old nulliparous woman of small stature, whose estimated date of confinement was in early June 1989. It is alleged by the HCCC that there was evidence of hypertension during the pregnancy, either due to pre-eclampsia or gestational hypertension. There was also a breech presentation which was not diagnosed until the commencement of the labour, and a major failure of the labour to progress. P1 was eventually transferred to hospital for Caesarean Section delivery after her cervix had been fully dilated for six hours. The breech presentation was unexpected at birth as an ultrasound had never been conducted.

At that time it was Ms Lecky-Thompson's policy to advise her patients against ultrasound testing of the foetus, on the grounds that any adverse consequences of this relatively new technology are yet to come to light.

In the case of P1, the HCCC claimed that Ms Lecky-Thompson departed from the standard of care owed by a competent midwife, due to her failure to:

- (i) conduct any ultrasound or other diagnostic investigation in an attempt to determine the possibility of foetal pelvic disproportion;
- (ii) transfer the patient to hospital immediately on discovery that the labour involved a breech presentation;
- (iii) transfer the patient after two hours' failure to progress in labour.

Ms Lecky-Thompson defended her actions by the following arguments:

- (i) P1 had no complaint with the care provided; a complaint was made on her behalf by a family member.
- (ii) *"My experience told me that P1 and her baby were normal, despite several elevated blood pressure readings and despite the textbook recommendations for length of time in the 2nd stage (of labour)."*
- (iii) She did not take P1's blood pressure up until she had been in labour for

six hours because "I was convinced that she was a normal woman in a normal labour."

Patient 2

After a pregnancy progressing beyond 42 weeks, P2's labour commenced on 21 May 1991 and a previously undiagnosed breech presentation became apparent. Ms Lecky-Thompson allowed the home birth to proceed even in the presence of dipping of the foetal heart rate. The delivery progressed only up until the stage when the baby's body had been delivered. Ms Lecky-Thompson was unable to deliver the head and encountered difficulty with delivering the arms. The baby was still-born, having been subsequently delivered by a medical practitioner some half hour after the death.

In the case of P2 the HCCC claimed that:

- (i) it is unacceptable that midwives undertake the delivery of breech babies in the home;
- (ii) there was inadequate monitoring of the foetal heart rate and the mother's health;
- (iii) there was inadequate assistance with the delivery at home.

Ms Lecky-Thompson defended her actions as follows:

- (i) P2 also had no complaint with her care.
- (ii) In response to the HCCC's supposition that P2 should have properly been given the opportunity to benefit from hospital care where she could have had continuous Cardiotocographic (CTG) monitoring, and immediate access to an operating theatre, Ms Lecky-Thompson claimed that "both these suppositions are faulty:

1. *Electronic Foetal Monitoring cannot guarantee that all fetuses are safe because the equipment is incapable of determining which babies are really at risk;...*
2. *"...it is simply not possible to have a Caesarean immediately, just because one is indicated."*

Ms Lecky-Thompson defends the practice of midwives conducting home-births of breech deliveries by quoting from U.K. midwife, Professor Caroline Flint:

"As women are hemmed in by the lack of

choice and the insistence of their obstetrician that they either have a caesarean section or are delivered in lithotomy with forceps, some are turning to homebirth and delivery by independent midwives...So the independent midwife forced into this situation has to look at the myths and practices which have grown up surrounding breech births and try to map out a course which will ensure the greatest safety for both baby and mother."

Patient 3

P3's pregnancy had progressed to 44 weeks and there were a number of other reasons for concern over the health of the baby. The post term confinement was nevertheless undertaken at home. Ms Lecky-Thompson attempted a ventouse extraction of the foetus which was subsequently delivered stillborn. The HCCC claimed that it is not appropriate that a ventouse be used in a home delivery.

Ms Lecky-Thompson defended her use of the ventouse extraction mode of delivery by arguing that she has received Obstetric training in the use of a ventouse. Her training as such, has consisted of Ms Lecky-Thompson's observations of its use by Obstetricians at various births.

Ms Lecky-Thompson also claims that P3's baby was born with a congenital abnormality and would have died in any event.

"There are statistics that show that babies can die in every environment with the best will and care in the world, this is a fact of life."

P3 commenced civil proceedings against Ms Lecky-Thompson in the Supreme Court of New South Wales in 1992. The case was settled out of Court in 1995 on undisclosed terms.

Patient 4

P4 was diagnosed as being pregnant with twins, her estimated date of confinement being 5 February 1992. After being turned away by a birthing centre whose policy was to direct all multiple confinements to hospital, P4 consulted Ms Lecky-Thompson and claims that Ms Lecky-Thompson assured her that a home birth for twins would be safe. P4 went into labour (prematurely) at 36 weeks and the home delivery proceeded. There was an alleged 2 to 3 hour delay after the birth of the first twin and the mother allegedly suffered intra partum and post partum haem-

orrhage such that she was thought to have lost in excess of half her total blood supply, based on her body weight and haemoglobin count of 57 grams per litre when she arrived at the hospital.

Ms Lecky-Thompson's attempts to deliver the placenta resulted in the cords snapping. It is alleged that Ms Lecky-Thompson ignored repeated suggestions by the husband of P4 that she be transferred to hospital, this not having occurred until some 3 hours after the birth of the second twin.

Upon arrival of ambulance assistance, P4 was suffering from severe hypovolaemic shock. She subsequently developed irreversible renal and pituitary failure. She has since undergone a renal transplant and bilateral hip replacement. She will also remain dependent upon corticosteroids for the rest of her reduced life expectancy.

The HCCC claimed that Ms Lecky-Thompson departed from the standard required of a competent midwife in the case of P4 in that:

- (i) multiple births constitute a "high risk" situation and such births should not be undertaken at home;
- (ii) the delay between the delivery of the second twin was in the order of four times the period which would have been acceptable according to standard obstetric practice;
- (iii) both the second twin and the placenta were sought to be delivered in an upright position in a woman who had already suffered hypovolaemic shock and an undelivered placenta;
- (iv) there was inadequate treatment provided in response to P4's drop in blood pressure post partum, evidenced by the use of a butterfly cannula rather than a wider bore cannula through which to administer intravenous fluids;
- (v) there was an unacceptable delay in transferring the mother to hospital by which time she had suffered irreversible damage to her renal system.

Ms Lecky-Thompson has defended her actions arguing that P4's condition remained stable throughout the period at home and that her renal collapse occurred as a result of events occurring at the hospital after transfer. In particular, she claims that:



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Homebirth midwife Maggie Lecky-Thompson is facing serious allegations of professional misconduct

- (i) she provided adequate advice to P4 and her husband concerning the known risks associated with twin births;
- (ii) there were no complications surrounding the delivery of the first twin and Ms Lecky-Thompson felt that P4 should be given time to "recover" before attempting the delivery of the second twin;
- (iii) there was no intra-partum bleeding and no significant postpartum haemorrhage;
- (iv) P4's vital signs remained reasonably stable throughout both deliveries and up until the time when transfer to hospital was required, such that Ms Lecky-Thompson denies the diagnosis of hypovolaemic shock by the ambulance attendants at the delivery scene;
- (v) the ambulance attendants unnecessarily delayed the transfer of P4 by treating her at the scene;
- (vi) the hospital staff caused further blood loss by attempting manual removal of the placenta despite Ms Lecky-Thompson's urges that they proceed straight to theatre;
- (vii) there was a failure to adequately monitor the vital signs of P4 in the post-operative period.

The HCCC argued that the events after P4's transfer to hospital are not rele-

vant as the Proceedings before the Tribunal are concerned only with an assessment of whether Ms Lecky-Thompson complied with the requisite standard of care during the homebirth.

Patient 5

P5's labour occurred in November 1994 and ambulance transfer of the mother to hospital was subsequently required. Ms Lecky-Thompson drove the baby to hospital in her car. Upon arrival it was discovered that he was in a serious state of ill health, having been given oxygen since the time of birth. Intensive care treatment was subsequently required. The HCCC claimed that the treatment and diagnosis of the baby's condition was inadequate in that there was an unacceptable delay in the baby's transfer to hospital and inappropriate use of a ventouse to assist in the delivery.

Ms Lecky-Thompson claims that P5 had no complaint with her care.

Ms Lecky-Thompson does say that:

"I believed that I had made an error of judgement at the time with baby P5. I believed that if I had continued oxygen for a slightly longer period at home we would have been alright, he was transferred only because his mother's condition deteriorated."

Patient 6

This complaint arose out of matters stated by Ms Lecky-Thompson whilst

under cross-examination. Similar to the situation of P4, P6 was involved with a homebirth of twins. In evidence before the Tribunal, Ms Lecky-Thompson admitted that she had withheld information from an Obstetrician in Wollongong concerning a delay in transfer to hospital in the case of a postpartum haemorrhage.

The HCCC was granted leave by the Tribunal to include the circumstances of this case as a 6th complaint against the respondent. Evidence in support of this complaint was taken directly from the statements made by Maggie Lecky-Thompson under cross examination, as recorded in the transcript of the proceedings. No additional evidence was called.

Comment

In his opening to the Tribunal, Mr Basten Q.C. made the point that it is not the unfortunate levels of morbidity and mortality in these cases, which is the Commission's ultimate test of misconduct: it is the contention that it is not acceptable to simply abandon accepted standards of medical practice, simply on the basis of individual experience, which the Commission has "put to the forefront".

When the Commission sought to investigate the circumstances surrounding one of the complaints in April 1990, it was asked by Ms Lecky-Thompson to use as an appropriate source of standards, the

two-volumed text book titled *Effective Care in Pregnancy and Childbirth*.

One of the editors of this book is Professor Marc Keirse, Professor of Obstetrics and Gynaecology at the Flinders University in South Australia, (and co-author of the article referred to in the Introduction above). Professor Keirse has home birthing experience in a number of countries including Holland, where the home birth delivery rate is around 30% of all deliveries.

In her defence, Ms Lecky-Thompson has stated that she has found

“high motivation, good preparation, devoted support people and a strong trust relationship with me, their midwife, being of greater import than the medical risk criteria.”

In relation to this comment, Professor Keirse, who has assisted the Commission in his capacity as an expert witness, and who is a strong supporter of homebirths in appropriate circumstances, has stated:

“As such psychological support is apparently all that she offers in further diagnosis and treatment, even when severe conditions such as gestational hypertension are diagnosed, when a breech presentation stagnates at full cervical dilation for several hours, or when a woman suffers considerable blood loss post partum it is not surprising that she will witness the “strong relationship with me their midwife” to be of far greater importance than anything else. In actual fact, nothing else can be witnessed because nothing else is being offered until, of course, it all goes dreadfully wrong. Fortunately it does not always go wrong.

“People in general, and pregnant women in particular, are remarkably resistant to mal-treatment. An individual practitioner can, therefore, go on with a few too many losses along the way, believing they are building up experience when, in fact, they are doing nothing more than repeating the same mistakes with increasing confidence.

“Unfortunately, however, stressing their ‘strong trust relationship with me their midwife’ over and above actual treatment or health care thereby also indicates a great misuse and abuse of the trust placed in her as their midwife.”

The Law

The Nurses Act 1991 (NSW) defines “professional misconduct” as unsatisfactory professional conduct of a sufficiently

serious nature to justify the removal of the nurse’s name from the Register. Unsatisfactory professional conduct includes but is not registered to any of the following:

- (a) Any conduct that demonstrates a lack of adequate knowledge, experience, skill, judgement or care by the nurse in the practice of nursing;
- (b) any other improper or unethical conduct relating to the practice of nursing.

Should the Tribunal find that Ms Lecky-Thompson is guilty of professional misconduct as alleged, she may have her name removed from the Register of Nurses and lose her right to practice as an independent midwife.

Unlike a civil action for Common Law Negligence, where the plaintiff bears the onus of proof to establish the case “to the balance of probabilities”, the applicable onus on the part of the HCCC before the Nurses Tribunal, is to prove its case to the standard of the *Briginshaw Test*: “to a comfortable satisfaction”. This may be considered significantly greater than that required of the civil standard of proof, “on the balance of probabilities”, but less than the criminal standard, “beyond a reasonable doubt.”

The Tribunal has the power to sanction the respondent in the event that a complaint has been proved, by virtue of section 64 of the *Nurses Act 1991* (NSW). Lesser penalties include the power of the Tribunal to:

- (i) caution or reprimand the person;
- (ii) direct that such conditions, relating to the person’s practice, as it considers appropriate, be imposed on the person’s accreditation;
- (iii) order that the person report on his or her practice at the times, in the manner and to the persons specified by the Tribunal;
- (iv) order that the person seek and take advice, in relation to the management of his or her practice, from such persons as are specified by the Tribunal;
- (v) suspend the person from practising for a specified period.

The professional future of Ms Lecky-Thompson as a practising independent midwife, hangs in the balance of the Tribunal’s decision.

The future of the home birth move-

ment in New South Wales and indeed, throughout the rest of Australia is supported by the Health Care Complaints Commission in its endeavour to ensure that our midwives uphold acceptable standards of practice and that they are accountable to the public in the same way as any other practising health care professional.

On behalf of the NSW public, the HCCC looks to the Nurses Tribunal in these proceedings to define the minimum standards of practice that should be applicable with regard to home births in this country. Following the research and publication of statistics by such specialists as Bastian, Keirse and Lancaster, it is apparent that the precise definition of such minimum standards of practice is long overdue.

Postscript

The writer notes that the Nurses Tribunal delivered its findings in the Local Court of NSW on Friday 13th November 1998. Those findings were that all 6 complaints were proven by the HCCC. With respect to Complaints 1 and 2, Ms Lecky-Thompson was found to be guilty of “unsatisfactory professional conduct” but the Tribunal was not of the opinion that the issues raised any questions regarding the fitness of the respondent to practise as a midwife and therefore as a registered nurse.

With respect to each of the remaining Complaints 3 to 6, Ms Lecky-Thompson was found to be guilty of “professional misconduct” such that the Tribunal does question the fitness of the respondent to practise as a midwife and therefore as a registered nurse.

The proceeding have been adjourned to 15 December at which time the Tribunal will deliver its finding regarding the penalties to be imposed upon the respondent.

An analysis of the Tribunal’s decision with respect to each complaint and the penalties to be imposed will be reported by the writer in a future edition of *Plaintiff*. ■

Karen Stott is an Associate Solicitor of the firm Charlton Shearman Medical Lawyers who are representing P4 and her husband in civil proceedings against Ms Lecky-Thompson in the Supreme Court of NSW. A trial date for the civil proceedings has not yet been set.

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