Women and Birth 28 (2015) 65–70

Contents lists available at ScienceDirect

Women and Birth

journal homepage: www.elsevier.com/locate/wombi

DISCUSSION

Guilty until proven innocent? – The Assumption of Care of a baby at birth

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ARTICLE INFO

Article history:
Received 17 July 2014
Received in revised form 1 October 2014
Accepted 31 October 2014

Keywords:
Assumption of Care
Child protection
Midwifery
Ethics
Cognitive dissonance

ABSTRACT

Background: This paper provides an overview of the history of child protection, the associated law and the 2008 amendments to the Child and Young Persons (Care and Protection) Act 1998 in relation to the Assumption of Care at birth Practice.
Objective: To explore the current practice of an Assumption of Care (AOC) where a newborn baby is removed from his/her mother at the time of birth, particularly focussing on the impact of the AOC on midwives.
Discussion: Assumption of Care practices in NSW raise significant issues for midwives in relation to the midwifery codes of ethics and conduct and importantly, to their ability to work in ways that honour a "woman-centred care" philosophy. When midwives are exposed to conflict between workplace and personal or professional values such as the practice of AOC cognitive dissonance can occur.
Conclusions: Further research is required to understand the impact of current Assumption of Care. Broader research to not only look at effect on the midwife but also on other health professionals involved and the women who personally experience the removal of their baby at the time of birth. Consideration must also be given to ways of working with vulnerable families to enhance the acceptability and efficacy of maternity services and with associated agencies will decrease the need for Assumption of Care at birth.

1. Vignette

Amanda a 35 year old mother of 2, presented for her antenatal booking visit at 16 weeks gestation. Her psychosocial screening revealed a past history of Domestic Violence (DV) and dealings with the Department of Community Service (DoCS). Amanda's previous contact with DoCS was for assistance with out of home care for her children while she left her violent partner. She was now in a new stable relationship and the pregnancy was planned. Because of her history with DoCS the midwife was mandated to submit a Prenatal Report to DoCS. With regular antenatal care no further action was taken.

Amanda attended all her antenatal visits and at 39 weeks gestation presented in labour. She developed a trusting relationship with her midwife and her baby was born at 5 pm. As a Prenatal Report had been made the obligatory birth notification to DoCS was completed. A follow up call from DoCS indicated that within an hour Amanda would be served with a Court Order signifying an assumption of care (AoC). No indication was given as to the reason for the AoC however security back up was requested. Owing to the risk of "flight" Amanda was not to be informed. Although Amanda's antenatal history indicated past DV and DoCS involvement the midwife had no child protection concerns.

Two security officers cordoned off the area prior to the AoC. When the DoCS case manager arrived introduced herself and explained the purpose of her visit the family were distraught. After being told to say good bye to their baby the case manager took him away. Although Amanda pleaded with the midwife to help stop her baby being taken there was nothing the midwife could do. All Amanda could do was to pack up and leave the unit without her baby.

2. Introduction

This is a fictitious vignette but it highlights some of the issues that arise due to assumption of care practices. Over the past four years there has been a significant increase in the number of babies being removed from their mothers in the birthing environment because of child protection concerns.[1] In NSW

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http://dx.doi.org/10.1016/j.wombi.2014.10.008
1871-5192/

the Department of Community Services (DoCS) is involved and the process is known as 'assumption of care'. This paper does not enter into the debate around individual child protection cases but focuses instead on the actual practice and effects of AoC at birth. The effect of AoC is devastating for the woman. It also raises complex issues for all professionals involved. For midwives charged with the responsibility to provide "woman centred care", AoC of a baby following birth can present particular clinical, moral and ethical challenges. This paper provides background information on the practice of AoC, an overview of the history of child protection and the associated laws that govern child protection (specifically in New South Wales), discusses the issues that the practice raises for midwives and the implications on antenatal care.

3. Background

Child protection is everybody's business[2] and is as much a concern for midwives as it is for others in our community. Child abuse and neglect are not new problems but concerns are perhaps elevated now more often due to routine psychosocial and domestic violence screening that increasingly form part of antenatal care in Australia and internationally. In Australia formal antenatal psychosocial screening was first introduced in Sydney. The initial 2001 version consisting of 31 questions and in conjunction with the Edinburgh Depression Scale (EDS) was used to identify women with psychosocial risk factors. The number of questions has been reduced and with the EDS is used routinely to identify and refer women to appropriate support and early intervention services.[3]

In NSW health policy mandates psychosocial assessment and depression screening for all women at the antenatal booking visit and at six to eight weeks after birth.[4] The combined screening occurs at the woman's first midwifery antenatal booking visit and identifies women with psychosocial vulnerabilities such as adverse childhood experiences, domestic violence, drug and alcohol or mental health issues or a history with the DoCS, as seen in the above vignette. NSW health policy directives clearly outline health care worker's responsibilities for mandatory reporting of any child at risk of harm.

Despite policy and mandatory child protection and training aiming to equip health and related workers with the necessary knowledge and skills, Woods suggests there remains a lack of understanding of the principles of child protection.[5] Additionally the practice of health care professionals varies depending on the maternity facility's location, service capabilities, and the associated support systems/services in place.

Midwives play a role in the AoC of babies who are deemed to be at-risk from birth. Participating in the removal of babies from their mothers during this time can conflict with the fundamental role of midwives and can be a source of great distress. Little is known about how best to conduct the process of AoC in order to protect the emotional, professional and social safety of all of those involved.

4. History of child protection

In 1796 Thomas Spence published 'The Rights of Infants', which is among the earliest English-language assertions of the rights of children.[6] Australia's history of child protection begins in the United Kingdom where in 1889 the parliament passed the "children's charter" which was designed to prevent cruelty to children. Following this, police had the power to enter a home to arrest anyone found physically ill-treating a child. The Child Protection Act of 1908 specified that foster parents had to be registered and changed the accountability of sexual abuse within families from the clergy to that of the State.

In Australia, with increasing public awareness of child protection issues, the first child protection society, the National Society for Prevention of Cruelty to Children (NSPCC), was established in NSW in the late 19th century.[7] The Victorian and Western Australian NPSCC followed in 1984 and 1906 respectively. These groups were responsible for investigating and reporting child abuse and neglect; a mandate that continued well into the 20th century.[8,9] By the end of the 19th century each Australian State and Territory had Children's Courts and legislation to protect children from recognisable forms of maltreatment. This included physical abuse and denying medical treatment to a sick child.

Up until the 1950s neglected or abused children were placed in institutionalised children's care facilities but concerns about the standard of living led to children being placed in smaller group care.[10] Although legislation and Children's Courts had been established, it wasn't until the early 1960s that governments and the general public became interested and involved in child protection.[11] The catalyst for this was research by Kempe, Silverman, Steele, Droegemueller, and Silver in 1962 that identified the "battered-child syndrome".[12] The research described untreated physical injuries in children that were caused by physical abuse by caregivers resulting in a significant cause of childhood disability and death for children under the age of 3 years.[13] Subsequent pressure placed by medical staff and media led state governments to establish and enhance systems for investigating and dealing with child abuse and neglect in Australia.

Legislation defining child abuse and neglect were expanded to include emotional abuse, neglect, sexual abuse and physical abuse with the age increased to include young people up to the age of 18.[13] Tasmania first introduced legislation for mandatory reporting of child abuse and neglect (1974) followed by South Australia, New South Wales and Queensland. It is now in place Australia wide. Since the late 1990s Australian state and territory governments have acknowledged the importance of a collaborative child protection model to support families and have subsequently adopted 'new' models of child protection and family support services.[14,15] Despite Australia being established as a Commonwealth in 1901 child protection services remain state based, governed by differing legislation and practices.

Australian state and territory governments agree that statutory child protection services in isolation are unable to provide support to all families in need. Child protection approaches now encompass the belief that protecting children is everyone's business and that parent's, communities, governments, non-government organisations and businesses all have a role to play. The contemporary public health model provides a framework where preventative interventions are categorised as primary, secondary or tertiary. Secondary prevention interventions are provided to families who are deemed to be at risk of child maltreatment, while tertiary child protection services are deemed to be a last resort for families where child abuse and neglect has occurred.[16]

5. The legislative framework

5.1. National perspective

The *National Framework Working for Protecting Australia's Children 2009–2020* was released by the Australian Government in April 2009.[17] The National Framework represents for the first time cooperation and collaboration between Australian state and territory governments and non-government organisations in order to protect children. The emphasis in the plan is on early intervention programmes, better support for children in care and their families, and improved information-sharing between