

OBSTETRICS-GYNECOLOGY LITIGATION: 17 YEARS OF MEDICO-LEGAL EXPERIENCE IN PROFESSIONAL LIABILITY WATCHDOG

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ABSTRACT

Background: Medical liability in obstetrics-gynecology is a phenomenon of great impact in professional liability disputes.

Methods: This article presents the results from analyzing medical professional liability claims from the obstetrics-gynecology department in a Level III University Hospital in Italy filed between 01.01.2003 and 31.12.2019.

Results: Out of 130 total claims filed, 78 derive from the obstetrics department and 52 from gynecology. In obstetrics, 25 cases pertain to vaginal delivery and 27 to cesarean sections. In gynecology, 37 cases pertained to the diagnosis or treatment of diseases affecting the female genital system, 15 to omitted or missed prenatal diagnosis of fetal malformations, 11 to the pregnancy or postpartum period, 12 to pregnancy termination, and 3 to artificial insemination. In the obstetrics-gynecology area, 40% of these compensation claims were accepted. This is higher than the average overall percentage of claims documented in the medico-legal watchdog database during the same time period, which was 33%. The acceptance rate for claims deriving from the obstetrics department was 25%, while the acceptance rate for complaints filed in the gynecology department was 57%.

Discussion: Obstetrics and gynecology represent a high-risk sector for medico-legal litigation with a greater percentage of accepted compensation claims than the general case study data. In the obstetrics field, there is a high frequency of claims for damages incurred during cesarean sections, even though the injuries claimed are mainly connected to the overall surgical procedure. The gynecological area also has a greater rate of compensation claims accepted by Medico-Legal Services, making this an area of particular interest for prevention.

Conclusions: The implementation of a dedicated medico-legal watchdog on professional liability serves to prevent and lower compensation rates through the analysis of claims from this high-risk area.

Keywords: Medical liability, medico-legal evaluation, insurance claim, gynecological liability, obstetrics liability, clinical risk management.

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Introduction

Medical liability in the obstetrics-gynecology area is a phenomenon of great impact in professional liability disputes all over the world. Obstetricians and gynecologists are involved in a specific biological phase of human life in which the activities of healthcare professionals impact the complexity of the procreative process, starting from the conditions for conception until and after birth. The entire sector manages a substantial number of cases making

this field crucial to medical knowledge and literature production⁽¹⁻³⁾. Erroneous conduct on the part of a professional in this particular area may result in damages of great economic value, with potential consequences for both the woman and the unborn child, as well as the potential damages incurred by other family members even though not directly affected by the clinical situation.

Among the various medical specializations, this particular sector is considered "high risk" for compensation claims considering the particular and

delicate nature of professional liability disputes. Consequently, medico-legal specialists are the most suited to performing such evaluations⁽⁴⁻⁵⁾. In recent decades, it has become clear that this field requires analysis and management through proactive prevention strategies and clinical risk management programs⁽⁶⁻⁹⁾.

In 1999, a Medico-Legal Services Watchdog was set up for professional liability cases in a Level III University Hospital in Italy with the objective of monitoring and analyzing these malpractice claims. The purpose of the study is to present the data collected from the obstetrics-gynecology area in order to describe the main characteristics of the disputes and highlight the situations of risk so as to improve prevention processes.

Materials and methods

This article presents the results from analyzing medical professional liability disputes filed between 01.01.2003 and 31.12.2019 in a Level III University Hospital. By means of the Medico-Legal Services archives, the study analyzed disputes relating to the obstetrics-gynecology area only.

Results

There are a total of 1451 cases in the Medico-Legal Services archives from the period in question. 130 claims were received from obstetrics-gynecology area, representing 9% of the total number of cases and the department with the third highest number of claims after general surgery and orthopedics. 29% of the claims pertain to damages sustained by infants or unborn children, the remaining 71% pertaining to adult female patients. Of the damages claimed, 43% were for permanent damages and 34% for temporary; 9% of claims referred to the induction of abortion, while 14% claimed due to patient death.

As regards the healthcare professionals involved, 67% were consultant doctors, 19% resident physicians and 14% healthcare professionals, especially midwives.

All claims for compensation in the obstetrics-gynecology area were categorized into more specific classes. The obstetrics category covers all activities concerning safeguarding the health of the mother and child during pregnancy, childbirth and postpartum, while the gynecology category covers all activities for protecting women's health. 78 (60%) claims pertain to obstetrics, 52 (40%) to gynecology.

We categorized the professional liability claims into six classes:

- Birth
- Antenatal diagnosis
- Pregnancy and after birth period
- Treatment of gynecological diseases
- Voluntary Interruption of Pregnancy (VIP)
- Artificial fertilization or Intra Uterine Device (IUD) positioning.

In obstetrics, there are 52 cases in which the claim concerns liability for acts that occurred during childbirth: 25 concern vaginal delivery and 27 cesarean section. 15 claims contain references to omitted or missed prenatal diagnosis of fetal malformations. Finally, 11 cases concern the pregnancy or postpartum period (Figure 1).

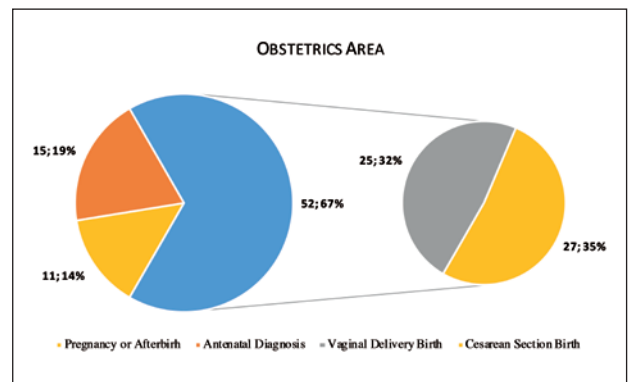


Fig. 1: Presentation of the obstetric area.

In the gynecology area, there are 37 claims pertaining to the diagnosis or treatment of diseases affecting the female genital system, 12 to Voluntary Interruption of Pregnancy (VIP), 3 to malpractice during artificial insemination or during intra uterine coil positioning (Intra Uterine Device) (Figure 2).

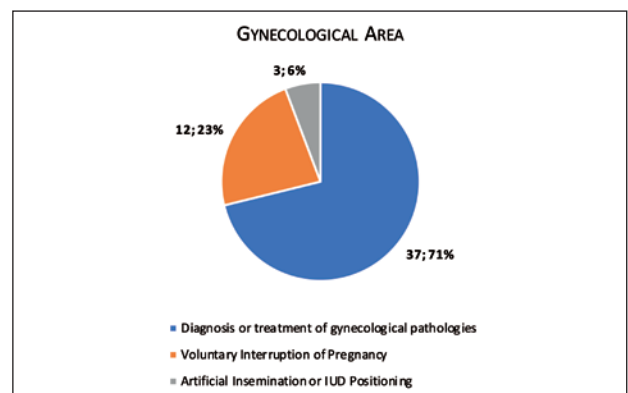


Fig. 2: Presentation of the gynecological area.

Through the classifications proposed before, we analyzed data for each category as follows:

- Birth - Total of 52 claims (Table 1)
- Antenatal diagnosis - Total of 15 claims

In the second area of classification, antenatal diagnosis, two areas of liability were the cause of claims: 12 due to the failure to diagnose fetal malformation, during the ultrasound investigation, while in 3 cases, claims were filed against the healthcare professional due to a lack of information regarding the diagnostic tests available for recognizing fetal malformation.

| OBSTETRICS AREA | | | |
|--|----|--|----|
| Vaginal delivery related claims | 25 | Cesarean section related claims | 27 |
| Neonatal death | 6 | Anesthesiological complications | 5 |
| Neonatal infection | 5 | Infection | 5 |
| Shoulder dystocia | 4 | Positioning-related injury after surgery | 4 |
| Hypoxic-ischemic encephalopathy | 2 | Retained foreign surgical bodies | 3 |
| Hysterectomy due to postpartum bleeding | 4 | Bladder injuries | 5 |
| Pathologies associated with the third stage: Placenta delivery | 4 | Hysterectomy due to postpartum bleeding | 5 |

Table 1: Contains data regarding liability claims filed in the first area of classification: birth.

• *Pregnancy and after the birth period - Total of 11 claims*

In the third area of classification, 3 claims were filed contesting the death of the newborn due to a failure to observe the mother after delivery, 5 claims contesting diagnostic delay of infectious or internal disease of the breast after delivery, 1 claim contesting the diagnostic delay of De Quervain Syndrome connected to childbirth, 1 claim contesting the death of mother and child following a thromboembolic disease during pregnancy, 1 claim contesting diagnostic/therapeutic delay of Wernicke's Encephalopathy in a pregnant woman with prolonged hyperemesis.

Treatment of gynecological diseases - Total of 37 claims

In the fourth area of classification, we categorized claims for technical errors that occurred during the execution of a surgical operation. 34 claims pertained to neoplastic disease, 2 claims to the diagnostic delay of infectious gynecological diseases, and 1 claim to organizational deficiencies on the part of the facility for failure to supervise a patient hospitalized for acute abdomen with extrauterine pregnancy. These 34 cases of surgery-related injuries incurred professional liability for numerous reasons: dissemination of neoplastic disease during surgery, perforation of the uterus, the permanence of a foreign body, injuries to the nearby anatomical nervous structures, excessive radicality of the surgery (total hysterectomy), urinary tract injuries, post-surgery bleeding and anesthesiological complications.

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Voluntary Interruption of Pregnancy (VIP) - Total of 12 claims

In the fifth area of classification, Voluntary Interruption of Pregnancy (VIP), 4 claims were filed due to failed interruption procedures, 4 claims due to perforation of the uterus during the procedure, and 4 claims of criminal liability due to the fact that the operation had not been carried out in accordance with current legislation, in particular regarding the gestational age.

Artificial fertilization or Intra Uterine Device (IUD) positioning - Total of 3 claims

In the sixth classification area, 1 claim was filed due to a test tube mix-up between two couples during medically assisted fertilization, and 2 claims were filed due to a technical error during the positioning of an Intra Uterine Device (IUD), which led to a perforation of the uterus.

On completion of a thorough analysis and evaluation, medico-legal specialists were able to determine whether these claims did indeed incur professional liability and, if necessary, to suggest a settlement without judicial proceedings. In the obstetrics-gynecology area, 40% of the compensation claims were accepted. This is higher than the average overall percentage of claims documented in the medico-legal watchdog database during the same time period, which was 33%. Our aim was also to verify the acceptance rate in the two different areas: in obstetrical disputes, 25% of claims were accepted, while in gynecological disputes, 57% of claims were accepted. As a result of the Chi-Square Test, these percentages showed a statistically significant difference of $p < 0.0005$.

Discussion

Regarding all data recorded in the Medico-legal Services database, the obstetrics-gynecology area accounts for 9% of all cases. This number appears slightly lower than reports from similar studies in the international scientific literature where the percentage of obstetrics-gynecology involvement is between 10% and 15%⁽¹⁰⁻¹³⁾.

This element appears to be due to the experience of Medico-legal Services accrued in the field of professional liability claims⁽¹⁴⁻¹⁶⁾ and the continual application of risk management procedures and proactive strategies for over 15 years in the hospital facility. This is even more significant given the fact that the hospital's obstetrics and gynecology clinic is a leading regional hub and is structured to provide high-level healthcare services. This attracts complex patients on a national level and, consequently, increases the percentage of challenging and high-risk cases.

The acceptance rate of claims in the obstetrics-gynecology area (40%) is higher than the general trend of cases recorded in the same period in the Medico-legal Services Watchdog database. Initially, it was thought that the higher tendency to accept claims was due to obstetrics activities, generally considered high-risk. However, on analyzing the data of claims divided between the gynecology and obstetrics areas, we noticed that the percentage of compensation in the obstetrics area was significantly lower than the general case study data. It is the gynecology area that alters the compensation rate for the entire discipline, making it an area of particular interest for clinical risk management and proactive prevention activities. The majority of claims in this area concerned gynecologic oncology surgery and the most frequently disputed damages were due to perforation of the uterus, intestine and other structures during surgery or invasive activities. This is supported by studies and reports found in the relevant literature⁽¹⁷⁻²²⁾.

Useful observations can also be made regarding liability claims for alleged mismanagement of births. This class of injuries has the highest number of claims both in the obstetric area and the entire discipline. We noted a high frequency of claims filed due to damages sustained during cesarean sections, i.e. the whole operation (anesthesiological complications, retained foreign body, infection at the surgical site, positioning injuries), rather than the cesarean section itself.

We noted that approximately one third of claims filed in connection with childbirth were accepted, the same as the general acceptance rate of compensation (33%). Therefore, childbirth should not be considered a stage wherein medical error necessarily occur more frequently, even though it may appear so at first glance. Our final observation regarding the obstetrics area has to do with the missed prenatal diagnosis of fetal malformations.

All disputes of this type were rejected. Where extrajudicial proceedings were followed by judicial proceedings, it was ruled that the healthcare professionals had incurred no liability please check this syntax, it seems to be not so clear. This confirms the awareness of the intrinsic limitations of ultrasound testing⁽²³⁻²⁴⁾.

Healthcare professionals in the obstetrics-gynecology field and the hospital facility should implement strategies and procedures to prevent the onset of these particular events. The most effective ways to achieve this are: adopting guidelines, protocols and updated procedures, performing ongoing clinical audits with subsequent feedback, implementing clinical mnemonics, scheduling simulations and proactively using incident reporting and closer collaboration/dialogue between medical staff and other professionals⁽²⁵⁾. As already mentioned, medico-legal expert consultancy and expertise are crucial for ascertaining professional liability. In fact, Italian Law No. 24 of 8 March 2017 on "the safety of care and professional medical liability" indicates that cooperation between a medico-legal specialist and a professional in the specialization in question is fundamental. In the obstetrics-gynecology field, medico-legal specialists, due to their specific competence in medical liability evaluations, can better understand the real picture and the difficulties of the discipline, particularly regarding the decision-making urgency that characterizes often unexpected events that require swift decisions with little time for deliberation. It is consequently of fundamental importance to obtain an accurate assessment of the compensation risk in view of a potential court case. Furthermore, it is extremely important that Medico-legal Services provide the hospital facility with the best and most accurate evaluation on medical professional liability. The medical-legal services database dedicated to the analysis of claims for professional liability allows the service to fully highlight the characteristics of all claims, including the medico-legal evaluations, and to compare the results with the relevant literature, where the economic aspect is often included⁽²⁶⁻²⁸⁾.

Conclusions

The obstetrics and gynecology area remain a crucial sector for medical liability, characterized by a higher risk of adverse events and a greater acceptance rate of compensation. The adoption of an analytical approach to claims with the aid of a medico-legal watchdog represents a practical methodolo-

gy for defining the probability of compensation and comparing cases with the specific literature in order to detect errors swiftly. It is also of great importance to establish a medico-legal watchdog database on medical professional liability to enable Medico-legal Services consultants to gain experience from these case studies in order to provide the hospital facility with the best evaluation.

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