Journal of Forensic and Legal Medicine 20 (2013) 442–446

Contents lists available at SciVerse ScienceDirect

Journal of Forensic and Legal Medicine

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

Original communication

Analysis of obstetrics and gynecology professional liability claims in Catalonia, Spain (1986–2010)☆

Esperanza L. Gómez-Durán MD, PhD, Forensic Doctor, Psychiatrist [a,*],
Joan Antoni Mulà-Rosías MD, Gynecologist [b],
Josep Maria Lailla-Vicens MD, PhD, Gynecologist [c],
Josep Benet-Travé MD, Epidemiologist [a],
Josep Arimany-Manso MD, PhD, Forensic Doctor, Dermatologist [a]

[a] Professional Liability Department, Barcelona's Official College of Physicians, Passeig Bonanova, 47, 08017 Barcelona, Spain
[b] Department of Obstetrics and Gynecology, Blanes Hospital, Blanes, Spain
[c] Department of Obstetrics and Gynecology, Sant Joan de Deu Hospital, University of Barcelona, Barcelona, Spain

ARTICLE INFO

Article history:
Received 7 August 2012
Accepted 26 December 2012
Available online 12 February 2013

Keywords:
Claims
Liability
Malpractice
Negligence

ABSTRACT

Objective: To identify relevant factors involved in obstetrics and gynecology (OG) professional liability claims to help archive better management of risks.
Study design: Analysis of 885 OG claims opened between 1986 and 2010, with the identification of the most common events leading to a claim, the economical and juridical characteristics of the claims, as well as the relevant trends over the study period.
Results: Most claims related to obstetrics. Labor, delivery and its complications accounted for 33.1% of the claims; 12.77% related specifically to cesarean. Oncological diseases, fetus death during labor and delivery, neurologically impaired infant and histerectomy-related problems were the most frequently claimed events. Most cases ended up without an indemnity payment and 37.7% of closed files were solved by an out-of-court procedure. Average payment was higher for the obstetric procedures than for those concerning gynecology cases. The proportion of claims relating to obstetrics increased during the study period, as well as the average payment.
Conclusion: OG is at high-risk for malpractice claims, but compensation awards are not frequent. However, particular events, such as retained foreign objects, tubal ligation, ultrasound diagnosis or neurologically impaired newborns, deserve special attention regarding medico-legal issues.

1. Introduction

Increasing malpractice litigation risks and medical liability insurance premiums have caused widespread concerns regarding their effects on medical care.[1] Archiving safe patient care has become an increasing focus of the medical community.

Obstetrics and Gynecology (OG) is among the specialties at high-risk for malpractice claims and the obstetrics' field accounts for most of the claims.[2] The influence of medical liability issues on OG practice remains unclear, but it has been reported that litigation risk changes specialists' practice and is one of the most cited factors by physicians to influence their decision on whether to provide obstetrical care.[3,4] Most allegations in obstetric lawsuits against obstetrician–gynecologists relate in some manner to the management of labor and delivery[5]; other reported bases of allegation relate to multiple pregnancies,[6] prematurity,[7,8] obstetric ultrasound[2] or fetal monitoring.[9] Shwayder[10] described nine prime areas for obstetrical litigation: errors or omission in antenatal screening and diagnosis, in ultrasound diagnosis, the neurologically impaired infant, neonatal encephalopathy, stillborn or neonatal death, shoulder dystocia, vaginal birth after cesarean section, operative vaginal delivery and training programs. All subspecialties in the field of OG have major professional liability risks and it has been suggested that the trend toward obstetrics could be counterbalanced by greater payments per lost claim in other areas, such as gynecologic oncology or maternal–fetal medicine.[11]

Reducing liability risk requires an understanding of the prime reasons physicians are sued.[12] Litigation climate may differ from

☆ The study was conducted in Spain.

* Corresponding author. Professional Liability Service, Barcelona's Official College of Physicians, Passeig Bonanova, 47, 08017 Barcelona, Spain. Tel.: +34 935 678 882; fax: +34 935 678 885.
E-mail addresses: elgomezduran@gmail.com, elgomezduran@comb.cat (E.L. Gómez-Durán).

1752-928X/$ – see front matter © 2013 Elsevier Ltd and Faculty of Forensic and Legal Medicine. All rights reserved.
http://dx.doi.org/10.1016/j.jflm.2012.12.006

one country to another[13] and different scenarios need to be studied to achieve a comprehensive international picture. Malpractice law in Spain resembles international laws, but the malpractice crisis is not as intense.

We present an 885-malpractice-claims analysis in OG, exploring the clinical and legal characteristics of the sample. To our knowledge, such a large and comprehensive analysis of malpractice claims in OG has not been published previously. Findings from this study will help identify the specific areas at high risk for malpractice claims and maintain patient safety associated with OG care.

2. Materials and methods

The Professional Liability Department (PLD) of Barcelona's Official College of Physicians has its own Claims Database. It collects information from the main liability insurance company in Catalonia (24,063 physicians in 2010). The data sources consist of clinical records, narrative statements, expert and peer reviews, deposition summaries, outcome reports and the cost of the settlement or award. Expert physicians and lawyers use a standardized electronic-form to collect information on patient data, clinical characteristics, adverse events and procedure outcomes.

Claim-files concerning OG were identified and reviewed. For the purpose of the analysis, the events that caused the claim were classified in different categories according to the clinical data collected in the review. The solving procedure was dichotomized as "court" versus "out-of-court", depending on the courts participation in the resolution. The PLD process of negotiating/litigating medical liability cases begins with the issuance of an opinion by the Legal Medicine Unit and PLD's lawyers. The case passes through different expert committees that make a decision: considered "non-risk", worthy of financial agreement or arguable in courts. Claimants or their attorneys receive the resolution and decide if they want to withdraw the claim, negotiate a financial agreement or go to the courts. Outcomes were dichotomized as "with" versus ""without consequences"", according to whether or not indemnity payment was made. Cases' awards were registered (allocated loss expenses and attorney fees not included).

We performed a descriptive analysis of the most common events leading to a claim during our study period, their economical and juridical characteristics and procedure trends of OG claims over time. Differences between groups were compared with the chi-square analysis and Kruskall–Wallis test with $P < 0.05$ for statistical significance. The statistical software package SPSS 12.0 was used for all data analyses. Ethics Committee approval was obtained.

3. Results

885 OG claims were identified among the 7237 malpractice claims opened between 1986 and 2010. This high percentage (12.23%) ranks OG in second position among the high-risk specialties, after Orthopedics and Trauma Surgery.

Most claims related to obstetrics (548 claims; 61.9%). Labor, delivery and it's complications accounted for 33.1% of the claims (a 53.5% of Obstetrics related claims). Claims related to cesarean accounted for 12.77% of the total amount of claims, but most serious events belonged to the other methods of delivery (Table 1). Oncological diseases, fetus death during labor and delivery, neurologically impaired infant and hysterectomy-related-problems were the most important claimed events (Table 2). Among Oncological Diseases, most claims related to breast cancer (73.28%). The most frequently claimed complication of hysterectomy was incontinence (7.55%), but in a high percentage of cases (33.7%) the hysterectomy itself was the claimed damaging event (e.g. emergency hysterectomy after childbirth).

Table 1
Claims related to cesarean delivery..

Claimed event	N (total: 113)	"With consequences"/ closed files
Deaths		
Fetus	33 (73 in the total sample)	6/31
Mother	4 (13 in the total sample)	1/3
Fetus & mother	1 (4 in the total sample)	0/1
Foreign objects	24 (51 in the total sample)	19/21
Neurologically impaired fetus	16 (68 in the total sample)	3/13
Hysterectomy after cesarean	13	2/11
Tubal ligation after cesarean	3	1/2
Cesarean itself	3	0/3
Scalpel burns	3	0/2
Wound infection	2	0/1
Kidney problems	2	0/2
Fetus injury during cesarean	2	1/2
Mother's neurologically impaired	1	0/1
Eventration	1	0/1
VHC infection	1	1/1
Suture problem	1	0/1
Uterine rupture	1	0/1
Intestinal fistula	1	0/0
Oophorectomy	1	0/0

Among closed files (786 procedures), most cases ended up "without consequences" (587 procedures; 74.7%). Claims related to obstetric procedures showed a slightly higher rate of cases solved "without consequences" (74.9%), than those related to gynecological procedures (74.4%), without statistical significance ($p = 0.866$). Among closed files, damaging events related to Foreign Objects showed a significantly higher rate of payment (71.73%) ($p < 0.0005$) than the rest of categories (Table 2).

Among those procedures that ended up "with consequences", average payment was significantly higher for obstetric (mean

Table 2
Primary claimed events ($n > 15$)..

Procedures	Total of claims	Payment rate (among closed files)	Payment mean (€)
Oncologic diseases	97	13.19% (12/91)	91,460.2
Breast cancer	74	14.28% (10/70)	88,852.2
Uterine cancer	20	11.11% (2/18)	104,500.2
Hysterectomy	80	22.39% (15/67)	57,861.9
Histerectomy itself	27	22.72% (5/22)	
Complications	53	20% (9/45)	
Fetus death during labour and delivery	73	22.22% (14/63)	111,583.5
Neurologically impairment child	68	31.66% (19/60)	477,871.6
Foreign object	51	71.73% (33/)	15,422.1
Gauze	43	70% (28/40)	16,968.2
Others	8	83.33% (5/6)	6763.9
Tubal ligation	49	39.58% (19/48)	35,288.3
Ineffective	28	32.14%	
Complications	13	69.23%	
Ultrasound diagnosis	47	18.42% (7/38)	403,224.2
Brachial palsy	27	26.09% (6/23)	143,025.9
Ectopic pregnancy	25	9.09% (2/22)	115,654.5
Ovary surgery	25	28% (7/25)	55,961.6
Voluntary interruption of pregnancy	23	30% (6/20)	87,579.2
Fertility treatments	20	15.79% (3/19)	69,365.3
IUD problems	16	21.43% (3/14)	12,329.3