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ORIGINAL ARTICLE

Analysis of court claims filed against obstetricians and gynaecologists in Spain. Specific study of the criminal court system (1987–2013)[☆]



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Abstract

Introduction: Court claims against gynaecologists in the Spanish criminal court system are a rare occurrence (less than 3%). These can lead to financial penalties, imprisonment and disqualification. Our aim is to study the court sentences issued in such cases, as these involve the most serious convictions, and to obtain a profile of those convicted.

Material and methods: A retrospective analysis of the sentences against gynaecologists during the period from 1987 to 2013. We used F-distribution tables, normal distribution tables and Student's *t*-test to compare differences between groups, and the Mann–Whitney nonparametric test for comparison of independent samples. In order to define two broad groups, those of “convicted” and “not convicted,” we performed a multivariate study analysis followed by cluster analysis to determine similar sentences.

Results: Of the 85 cases, 56.4% of complaints came from procedures in the public sector, but the highest rate of convictions (59.3%) was based on complaints originating in the private healthcare sector. The likelihood of conviction in events related to childbirth was 36.6% (20 out of 55) versus 16.6% (5 out of 30) in incidents of another origin. 69.2% of cases of criminal proceedings for permanent neurological damage (neonatal encephalopathy) concluded in a criminal conviction and had the highest financial compensation. The average time elapsed between the incident and the sentence was 5.7 years. With a prior conviction, the possibility of confirmation at higher levels was 71.9%. An acquittal was confirmed in 96.2% of cases.

Conclusions: Of the court claims filed against gynaecologists based on their professional activity, very few are decided upon in the criminal courts. Most are due to complications during

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PALABRAS CLAVE

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childbirth, and one-third ends with a conviction. A judgement of acquittal is most likely to be confirmed when this was the case with the previous one.

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Análisis de reclamaciones judiciales contra obstetras y ginecólogos en España. Estudio específico de la vía penal (1987-2013)

Resumen

Objetivo: En España las reclamaciones judiciales contra ginecólogos resueltas por vía penal son escasas, menos del 3%. Esta vía conlleva sanción económica y penas de cárcel y de inhabilitación. El objetivo es estudiar las sentencias resueltas por vía penal, por ser de consecuencias más graves y obtener un perfil del condenado.

Material y métodos: Análisis retrospectivo de las sentencias judiciales penales contra ginecólogos desde 1987 hasta 2013. Hemos utilizado tablas de distribución de Fisher, de normalidad y el t-Test para comparación de diferencias entre grupos y la prueba no paramétrica de Mann-Whitney para comparación de muestras independientes. Para la caracterización de dos grandes grupos, el de «condenado» y «no condenado», realizamos estudio multivariante mediante análisis de correspondencias múltiples seguidas de análisis de conglomerados para agrupar.

Resultados: De 85 casos el 54,6% de las reclamaciones judiciales procedían de actos médicos del sector público, aunque el mayor número de condenas, el 59,3%, lo fue por demandas sobre hechos ocurridos en el ámbito de la sanidad privada. La probabilidad de condena en sucesos relacionados con el parto fue del 36,6% (20 de 55) frente al 16,6% (5 de 30) de episodios de otro origen. En el 69,2% de los casos de procedimientos penales por daño neurológico (encefalopatía neonatal) la sentencia fue condenatoria y con las indemnizaciones más elevadas. El tiempo medio transcurrido entre el incidente y la condena fue de 5,7 años. Con una condena previa, la posibilidad de confirmación en instancias superiores fue del 71,9%. Una absolución se confirmó en el 96,2% de las ocasiones.

Conclusiones: Aunque es elegida para iniciar el procedimiento pocas reclamaciones se resuelven en vía penal. La mayoría se deben a complicaciones durante el parto y en un tercio se condena. Lo más probable es que se confirme la sentencia previa cuando esta fue absolutoria.

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Introduction

Amongst legal claims against doctors, some specialties, such as obstetrics and gynaecology, stand out because of the large number of doctors involved in them, based on the number of specialists reported, and the high rate of compensation for convictions.

In some countries this increase in claims against gynaecologists is seen as a "crisis" in this specialty.¹ In our country there are few scientific publications that cast light on the scope of the problem: one by a group in Catalonia, the insurance brokerage "Uniteco" as well as one by our group,²⁻⁴ are the most detailed in this regard. Most of the publications that we consulted and used as references originate from the "American scenario",⁵ which is far removed from ours in terms of customs and the health and judicial systems, and which these publications recognise as more expensive and less effective.⁶

In Spain many claims are initiated in criminal court, because it is a more cost-effective procedure. Also, civil

liability, i.e., the amount of financial compensation, is determined in criminal court.⁷ Here, obstetrics and gynaecology are the medical specialties involved in the most lawsuits, with 15.53% of all claims, below only traumatology and orthopaedic surgery (15.69%). Considered overall, and for cases that go to a court of second instance or supreme court (in all courts), convictions and acquittals represent the same percentage, 50%, in the specialty. Specifically, and again considering all courts, convictions in obstetrics are more likely (57.6%) than they are in gynaecology (42.31%).⁴

Although criminal court is the route chosen to initiate a legal claim against doctors, it is the most difficult one in which to win a case. Doctors may be unaware of this fact.

In all areas the number of legal claims against doctors is increasing, and this has more relevance in some medical specialties, such as obstetrics and gynaecology, which are always ranked in the top spots (3), as they have the largest number of claims compensated and a higher rate of damages.⁸

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