

# Addressing the litigation crisis in Obstetrics & Gynaecology

Obstetricians & Gynaecologists in South Africa currently face a medico-legal crisis of serious proportions. The premiums of occurrence based indemnity insurance is now more than R1 million per annum, forcing many obstetricians to reconsider not only their choice of indemnity cover provider, but also their ability to provide obstetric care to patients in private practice. Although data is not available, this state of affairs most likely affects the choices prospective registrars with an interest in the discipline is making, resulting in the potential loss of high quality registrars being attracted to the profession.

Although the situation experienced in private practice is threatening the discipline on many fronts, the magnitude of the problem is far more extensive in the public sector, where the provincial health departments face literally billions of rands in contingent liability. The cost of medical litigation in the public sector comes from the health budget and is funded by taxpayers. This literally means money allocated to purchase medication and medical equipment are being used to settle medical negligence claims.

High indemnity cover insurance premiums are a reflection of risk as assessed by actuarial calculations based on the number and quantities of claims received by the respective indemnity cover providers. In a model where every discipline basically covers its own risk from the contributions of the members of that specific discipline, the consequence of very high risk is, off course, very high premiums.

The natural reaction by many gynaecologists in the discipline to the rapid escalation in fees has for many years been basically a case of “shooting the messenger”, with very limited concrete actions being put in place to try and address the actual problem, which is the inherent risk obstetricians and gynaecologists are presenting to indemnity cover providers. Measures attempting to address external factors such as capping claims, encouraging mediation and trying to substitute lump sum payments with provision of medical care have all been unsuccessful. The Better-Obs Programme, started by the immediate past president of SASOG, has been the first concrete attempt to address the situation via improved medical practice, and many readers in private practice would be familiar with this initiative. This programme includes adhering to South African guidelines for specific conditions, attending mortality and morbidity meetings and improved record keeping.

Limited information has been made available to enable a clear picture of what exactly the problems are that needs to be addressed with regards to litigation in both obstetrics and gynaecology cases. In obstetrics, cerebral palsy (CP), missed trisomy 21 and structural abnormalities are the main cost drivers. There has been a steady rise in the number of these cases as well as in the quantum associated with settling these cases.

According to limited local obstetric litigation data, around 30% of obstetrics claims are CP related. Of these, 68% were regarded as potentially not defensible claims, with incorrect interpretation of CTG tracing the reason in 52% and poor maternal and foetal monitoring a problem in 28% of cases. In the USA data showed that 70% of all obstetric related claims involved substandard care.<sup>1</sup>

Although it is well-known that most CP cases are not due to intra-partum asphyxia, CP claims can be extremely challenging to defend, especially in the presence of abnormal CTG tracings, which is another

unreliable special investigation frequently used against the profession in litigation. Cerebral palsy is a complex condition, with many causes and several different pathophysiological mechanisms, but in litigation cases it is frequently described as a simple matter of missed diagnosis of foetal distress or misinterpretation of CTG tracings, with obstetric, neonatology, paediatric neurology and radiography expert witnesses confidently rendering opinions years after the event on almost exactly when the brain injury during labour occurred.

There seems to be a risk in labour wards in private practice that needs to be urgently addressed to reduce obstetric litigation risk. Hospital groups must ensure labour ward nursing staff are adequately and well trained and adequate staff numbers are on duty to monitor patients in labour. The possibility of having medical doctors on duty in labour wards, similar to what is available in these hospitals' Accident and Emergency Units in private practice, needs to be urgently investigated and considered for implementation. Similar strategies have been proposed and implemented with some levels of success elsewhere.<sup>1,2</sup> In South Africa, we simply can no longer afford to pay for the risk where women are allowed to labour, inductions are being performed and labour are being augmented under unsupervised or poorly supervised conditions.

Litigation in gynaecology cases to a large extent follows surgical complications, regardless of the mode of entry. As most surgical procedures in gynaecology are still being performed through laparotomy, complications of open hysterectomy such as bladder and uterine injuries leaves the gynaecologist at high risk of having to deal with litigation from patients assisted by their personal injury lawyers.

There is virtually no available data to inform us on what issues need to be addressed with regards to gynaecology litigation. From the very limited available data, 63% of cases are deemed not being defensible. Procedures that are not indicated and delayed diagnosis of complications are the two main issues in this regard. More than 30% of gynaecology litigation can be avoided by ensuring inappropriate procedures are not being performed.

We are currently paying a high price for litigation risk. The public, who is very prone to litigate against doctors, and law practices specialising in personal injury litigation undoubtedly contributes to the current medico-legal crisis. Unfortunately a large part of the problem results from the practice environment we are functioning in, and we need to improve on this. We need to urgently expand on the initiatives already in place to lower the cost associated with the litigation risk in obstetrics & gynaecology, and we need to find and implement creative solutions to further reduce this risk. The cost of indemnity is our challenge to solve for the sake of our own professional security as well as that of the patients we serve. We will not solve it without changing practice and by continuing to do more of the same.

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## References

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