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OBSTETRICS

Obstetric litigation: The importance of the quality of clinical files and its influence on expertise conclusions

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To appreciate the Portuguese circumstances concerning situations of obstetric medico-legal conflicts and to evaluate the influence of the quality of files in expert conclusions, an analysis of all cases of obstetric medical responsibility from 2001–11 was carried out. File quality was evaluated by absence or insufficiency of clinical information supplied, by poor quality of document copies and by the registered incongruities among all the health professionals involved. Clinical files sent for forensic analysis were defective in most cases (89.5%). In about 11% of cases, expert opinion was inconclusive as a result of the poor quality of the clinical files sent for technical and scientific analysis. This situation is particularly serious in cases where the reason for the dispute was asphyxia, traumatic lesions of the newborn following instrumented delivery or shoulder dystocia and maternal sequelae, where the lack or absence of information, and poor quality copies were significantly associated with inconclusive opinions.

Keywords: Medico-legal, obstetric litigation, perinatal asphyxia, quality clinical files

Introduction

In recent years, we have witnessed a growing number of professional responsibility cases in the provision of health care; a trend also occurring in obstetrics and gynaecology.

With recent technological and clinical advances, the general public has acquired a high expectation of favourable results, and they consider that any deviation from this expectation must be someone's responsibility, usually the physician and/or staff who provided assistance. They do not take into account (nor is it released in media coverage of these cases) individual biological variations and that technology itself has its limits.

The knowledge that most health professionals have on this issue results from the USA's circumstances dissemination, where the problem of medical liability is present in day-to-day professional routine and has dramatic consequences at the level of daily activity and on professional choices. It is a situation that has existed for a few decades, and which has led to an escalation of insurance premiums that threaten obstetric practice (Dubay et al. 2001; Frigoletto et al. 2002, Hammond 2002, MacLennan and Spencer 2002, Owolabi and Farine 2002; Howard 2003 Kravitz et al. 2003, Mavroforou et al. 2003; Bettes et al. 2004, Chan and Willett 2004, Queenan 2004; Hammond and Schwartz 2005, Laros 2005, Pearlman and Gluck 2005, Queenan, 2005).

In Portugal, although there are already some studies on medical liability in general, there have been none on obstetrics in particular, apart from that already developed by the author in 2007. Then, it was found that about half of obstetricians had already been involved in at least one case of medical liability. A similar proportion admitted to practicing a positive defensive medicine, due to fear of litigation, but 25% of specialists and 10% of interns also admitted to practicing a negative defensive medicine (Domingues 2007; Domingues et al. 2009).

The aim of this study was the assessment of the Portuguese situation regarding medical liability in obstetrics, and the influence of the quality of clinical files on the outcome of these expertise opinions. This was achieved through the analysis of obstetrics cases examined in the Medico-legal Council (CML) since the creation of the National Institute of Legal Medicine and Forensic Sciences in 2001, and which are representative of the national situation concerning legal proceedings.

Material and methods

We reviewed and studied the cases of medical liability examined in the CML between 2001 and 2011, a total of 11 years, as well as their respective opinions. This analysis was carried out after formulating an application to consult the files, to the President of the Directing Council of the National Institute of Legal Medicine and Forensic Sciences, which was accepted.

The analysis of the sample was performed by drawing a grid on which were recorded the reasons/causes that led to the establishment of law suits, as well as the sequence of events that culminated in the disputed event.

In obstetrics, causes were divided into five categories: perinatal asphyxia (fetal or neonatal death, permanent neurological sequelae in the newborn); traumatic lesions in the newborn (result of instrumented delivery, breech vaginal delivery or shoulder dystocia); prenatal diagnosis/obstetric ultrasound; maternal sequelae (postpartum complications, including postpartum haemorrhage, postpartum hysterectomy, maternal mortality, surgical complications) and others (referring to all other cases not covered by the preceding groups).

The quality of clinical files was assessed by absent or insufficient clinical information on the episode in question, by the poor

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Table I. The relationship between quality files and the presence of causality.

	Causality establishment					
	No		Yes		Inconclusive	
	n	(%)	*n*	(%)	*n*	(%)
Perinatal asphyxia						
Insufficient information	20	37.7	16	88.9**	12	92.3**
Bad quality copies	6	11.3	5	27.8*	7	53.8*
Lack of data	17	32.1	14	77.8**	12	92.3**
Incongruities	7	13.2	4	22.2	2	15.4
Instrumented deliveries						
Insufficient information	2	22.2	4	100*	3	100*
Bad quality copies	1	11.1	1	33.3	1	33.3
Lack of data	3	50	4	100*	3	100*
Incongruities	1	11.1	2	50	1	33.3
Vaginal delivery in breech presentation						
Insufficient information	2	40	1	100	0	
Bad quality copies	0		0		0	
Lack of data	2	40	0		0	
Incongruities	1	20	0		0	
Shoulder dystocia						
Insufficient information	2	18.2	3	75*	3	100*
Bad quality copies	0		0		1	33.3
Lack of data	2	18.2	3	75*	3	100*
Incongruities	0		0		1	33.3
Prenatal diagnosis/obstetric ultrasound						
Insufficient information	0		0		0	
Bad quality copies	0		0		0	
Lack of data	0		1	100	0	
Incongruities	0		0		0	
Maternal sequelae						
Insufficient information	8	32	2	40	1	50
Bad quality copies	0		0		0	
Lack of data	3	12	1	20	2	100*
Incongruities	3	12	0		0	

*$p < 0.05$; **$p < 0.001$.

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quality of the copies provided and by the incongruities found between the clinical records of the various obstetric healthcare professionals involved.

We performed a comprehensive characterisation of the sample. All parameters were characterised by the determination of absolute frequencies and relative frequencies. The relative frequency of each cause for prosecution, each medical intervention that led to the complaint, the quality of the process and the result of expertise were determined per year. The annual change was graphed and the test of hypothesis of linear trend in relative frequency over the years was performed using the χ^2-test for trend.

Separately for each grievance, the χ^2-test was used to test the association between each of the results of the expertise conclusions and quality of clinical processes.

The level of significance used in this analysis was 5%. The statistical software SPSS version 19.0.0.2 was used.

Results

Of the 1,261 cases analysed in the period considered, 212 were selected regarding the specialty of obstetrics and gynaecology. Of these, 168 were related to obstetrics – which represents the sample of our study – and 44 to gynaecology.

In the 168 obstetrics cases analysed, we found that the situations leading to prosecution were, in order of decreasing frequency, perinatal asphyxia (50%); traumatic injuries of the newborn (24.4%); maternal sequelae (19%); prenatal diagnosis (5.4%) and other situations related to abortion and its treatment (1.2%).

Medical interventions in obstetric complaints that caused the cases analysed could be grouped into lateness/absence of caesarean delivery (50%), no appraisal of complaints and/or exams (28%) and instrumental deliveries (22%).

Regarding the quality of clinical files sent for examination, we found reference to their poor quality in 89.5% of cases (39.8% due to insufficient information; 36% due to the absence of data; and 13.7% due to poor quality copies).

The analysis of the evolution over the years for file quality showed no linear tendency for insufficient information ($p = 0.217$) nor for poor quality copies ($p = 0.316$), but a linear increasing tendency for lack of data ($p = 0.001$). The influence of file quality varied according to the subject of the complaint (Tables I and II).

When a causal link was established or was considered inconclusive, files with insufficient information were significantly higher in situations of perinatal asphyxia, instrumental deliveries and shoulder dystocia ($p < 0.001$, $p = 0.008$ and $p = 0.013$, respectively). Copies of poor quality were significantly higher ($p = 0.003$) in cases of perinatal asphyxia, and lack of data in clinical files were significantly higher in perinatal asphyxia ($p < 0.001$), instrumental deliveries ($p = 0.036$), shoulder dystocia ($p = 0.013$) and maternal consequences ($p = 0.032$) (Table I).

When a *leges artis* violation was suggested or considered inconclusive, files with insufficient information were significantly higher in situations of perinatal asphyxia, instrumental

Table II. The relationship between quality files and the presence of *leges artis* violation.

	Leges artis violation					
	No		Yes		Inconclusive	
	n	(%)	*n*	(%)	*n*	(%)
Perinatal asphyxia						
Insufficient information	19	35.8	15	88.2**	14	100**
Bad quality copies	6	11.3	6	35.3*	6	42.9*
Lack of data	16	30.2	13	76.5**	14	100**
Incongruities	6	11.3	4	23.5	3	21.4
Instrumental deliveries						
Insufficient information	1	12.5	4	100**	4	100**
Bad quality copies	0		2	50	1	25
Lack of data	2	25	4	100*	4	100*
Incongruities	1	12.5	1	25	2	50
Vaginal delivery in breech presentation						
Insufficient information	2	40	1	50	0	
Bad quality copies	0		0		0	
Lack of data	2	40	0		0	
Incongruities	1	20	0		0	
Shoulder dystocia						
Insufficient information	3	23.1	1	100*	4	100*
Bad quality copies	0		0		1	25
Lack of data	3	23.1	1	100*	4	100*
Incongruities	0		0		1	25
Prenatal diagnosis/obstetric ultrasound						
Insufficient information	0		0		0	
Bad quality copies	0		0		0	
Lack of data	0		1	100	0	
Incongruities	0		0		0	
Maternal sequelae						
Insufficient information	7	25.9	2	66.7	2	100
Bad quality copies	0		0		0	
Lack of data	4	14.8	0		2	100*
Incongruities	2	7.4	1	33.3	0	

*$p < 0.05$; **$p < 0.001$.

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deliveries and shoulder dystocia ($p < 0.001$, $p = 0.001$ and $p = 0.007$, respectively). Copies of poor quality were significantly more frequent ($p = 0.008$) in cases of perinatal asphyxia, and lack of data in clinical files was significantly greater in perinatal asphyxia ($p < 0.001$), instrumental deliveries ($p = 0.014$), shoulder dystocia ($p = 0.007$) and maternal consequences ($p = 0.034$) (Table II).

We recorded references to incongruities between different obstetric healthcare professionals (physician/doctor, doctor/nurse) in 9.3% of cases examined, a fact with no linear tendency over the years ($p = 0.162$). These incongruities had no significant differences in the situations analysed.

Discussion

We found that the most common cause of litigation in obstetrics was perinatal asphyxia alleged to be a result of intrapartum bad practice and consequent hypoxic-ischaemic encephalopathy that may result in neonatal death or neurological sequelae irreversible in the newborn, similar to that described in Europe and in USA (Laros 2005; Mavroforou 2003).Traumatic injuries of the newborn, mostly related to instrumental deliveries, shoulder dystocia and vaginal delivery in breech presentation, came into second place. The third most frequent reason for disputes in obstetrics, was maternal sequelae, which was a surprise, since this is not a relevant reason for dispute in the international literature. Prenatal diagnosis, mostly due to issues related to obstetric ultrasound, comes next, not reflecting the greater importance that health professionals in the area give it, nor the international situation described, but probably due to the fact that processes of this particular area do not reach the CML and are filed and resolved in other courts.

Regarding organisation of the clinical files sent for forensic analysis following a dispute, and in agreement with the general opinion of health professionals (Domingues 2007; Domingues et al. 2009), it was defective in most cases (89.5%).

It is important to emphasise the fact that this disorganisation of clinical files, often with incomplete, missing, illegible or inconsistent information, can influence the expert conclusions and outcomes of cases. This has been observed in about 11% of cases, where the opinion was inconclusive due to the poor quality of the clinical process sent for analysis.

The situation is particularly serious in cases of perinatal asphyxia, trauma of the newborn as a consequence or shoulder dystocia, instrumental delivery and maternal sequelae, where the lack or absence of information and copies of poor quality are significantly associated with inconclusive opinions.

If previously it was considered that the absence of data corresponded to absence of evidence, currently the trend is to consider that the lack of data and poor organisation of clinical files represents a failure by the professionals themselves. It is important to alert all healthcare providers in obstetrics to the value of proper filing and a full description of events in clinical files, as well as clear and correct registration of all clinical decisions and their justification. This is the best way to defend themselves if they are ever involved in medico-legal situations.

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