Risk Reduction Strategies in Obstetrics & Gynecology

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Medical Error: Frame of Reference

Source: Philadelphia Inquirer, 2008

The Facts

- Obstetricians saw a four-fold increase in malpractice premiums from 1975-2000.
- Most ob/gyns pay annual premiums of over $80K. Premiums exceeding $100,000 are common.
- Obstetricians rank first among all specialties for the number of claims reported.
- Ob/Gyn has the highest percentage of claims closed with payment…35.3%


C. P. Noel McCarthy, MD
1936-2009

Claims are the tip of the iceberg

- Claims >
- PCEs >
- Unknowns >

The Facts (continued)

- 75% of ACOG members have been sued at least once¹
- 65% of practitioners have made one or more changes to their practice out of fear of litigation²
- Ob/Gyns have an average of 2.6 claims filed against them during their careers (61% are obstetrics related)²

¹ Tuhus, Melinda. Women’s News. www.womensenews.org
² www.acog.org ACOG survey conducted in 2006
PIAA

- Physician Insurers Association of America
- Compiled malpractice claims data from more than 20 member companies
- Over 20 years: 1986-2006
- Purpose of the data: to help educate those who use claims data in the identification of claim trends by specialty, severity and misadventure

Top Five Specialties in # of Closed Claims (Claims Closed Between 1985-2006)

<table>
<thead>
<tr>
<th>Specialty</th>
<th>Total Claims</th>
<th>Avg. Indemnity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obstetrics/Gynecology</td>
<td>30,433</td>
<td>$273,466</td>
</tr>
<tr>
<td>Internal Medicine</td>
<td>29,973</td>
<td>$202,619</td>
</tr>
<tr>
<td>General and Family Med</td>
<td>25,809</td>
<td>$156,63</td>
</tr>
<tr>
<td>General Surgery</td>
<td>23,277</td>
<td>$175,67</td>
</tr>
<tr>
<td>Orthopedic Surgery</td>
<td>21,135</td>
<td>$161,145</td>
</tr>
</tbody>
</table>

Top 5 Largest Average Indemnity Payment (Claims Closed Between 1985-2006)

- Neurosurgery- $306,315
- Neurology- $302,873
- Obstetrics & Gynecology- $273,466
  - 31% of large loss claims ($1M) attributed to ob/gyn
- Pediatrics- $261,901
- Radiation Therapy- $258,428

5 Most Prevalent Medical Conditions (claims closed between 1985-2006)

<table>
<thead>
<tr>
<th>Conditions</th>
<th>Closed Claims</th>
<th>Avg. Indemnity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brain damaged infant</td>
<td>4196</td>
<td>$518,975</td>
</tr>
<tr>
<td>Malignant neoplasm of the female breast</td>
<td>4022</td>
<td>$229,354</td>
</tr>
<tr>
<td>Pregnancy</td>
<td>3896</td>
<td>$232,354</td>
</tr>
<tr>
<td>Symptoms involving the abdomen and pelvis</td>
<td>3162</td>
<td>$222,673</td>
</tr>
<tr>
<td>Acute myocardial infarction</td>
<td>2940</td>
<td>$218,296</td>
</tr>
</tbody>
</table>

5 Most Prevalent Medical Misadventures (claims closed between 1985-2006)

<table>
<thead>
<tr>
<th>Condition</th>
<th>Closed Claims</th>
<th>Avg. Indemnity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improperly performed procedure</td>
<td>56,735</td>
<td>$177,861</td>
</tr>
<tr>
<td>No medical misadventure</td>
<td>47,846</td>
<td>$204,404</td>
</tr>
<tr>
<td>Errors in diagnosis</td>
<td>45,365</td>
<td>$220,333</td>
</tr>
<tr>
<td>Failure to supervise or monitor case</td>
<td>15,675</td>
<td>$232,084</td>
</tr>
<tr>
<td>Medication errors</td>
<td>9,896</td>
<td>$130,942</td>
</tr>
</tbody>
</table>

Impact of Malpractice

- Early retirement
- Self-imposed limitations on practice
  - Stop obstetrics
  - Reduced VBACs
  - Higher Cesarean section rate
  - Fewer operative vaginal deliveries
- Reduced access to prenatal care (especially in rural areas)
- Fewer medical students choosing ob/gyn
Cesarean Section Rates

VBAC Rates

Terms related to med mal

- Adverse outcome
- Deviation from standard of care
- Causation: deviation led to adverse outcome
- Damages: economic & non-economic
- Joint and severable liability
- Crew resource management

Crew Resource Management
Crew Resource Management: Definition

- Team Training
- Crisis Resource Management
- Safety Culture Training
- Root Cause Analysis
- Error Management
- Human Factor Analysis

Can we do anything about it?

- What, if anything, can be done to reduce the risk of being sued?
- What, if anything, can be done to reduce the risk of paying anything out in a med mal case?

Prevention

Prevention is the best defense against lawsuits

Prevention of lawsuits

- No adverse outcomes
  - “better to be lucky than good”
- Practice within standard of care
  - Stay current
  - Read ACOG bulletins, journals, etc
  - Maintain board certification
- Be prepared- train for emergencies
- Informed Consent: underpromise/overdeliver
- Disclosure if adverse outcome
- Early intervention

Special circumstances

- Cerebral palsy/electronic fetal monitoring
- Shoulder dystocia
- Obstetric hemorrhage
- Breast cancer
- Medication safety
  - Oxytocin, misoprostol
  - Magnesium sulfate
- Multiple gestations
- Stillbirth
Cerebral Palsy
- Intrapartum hypoxia is uncommonly the cause of neonatal encephalopathy or cerebral palsy
- Less than a quarter of infants with neonatal encephalopathy have evidence of hypoxia or ischemia at birth
- Meconium, low Apgar scores, non-reassuring fetal heart rate patterns not necessarily evidence of birth asphyxia
  ACOG Task Force on Neonatal Encephalopathy and Cerebral Palsy, 2003

Electronic Fetal Monitoring
- False positive rate of EFM for predicting adverse outcomes is high
- The use of EFM is associated with an increase in the rate of operative interventions (vacuum, forceps, and cesarean delivery)
- The use of EFM does not result in a reduction of cerebral palsy case rates
  ACOG Practice Bulletin December 2005

Perinatal Bundles
- Elective inductions or labor augmentation with oxytocin are involved in more than 50% of cases leading to birth trauma. Bundle includes:
  - Assessment of gestational age
  - Estimated fetal weight
  - Monitoring fetal heart rate for reassurance
  - Pelvic assessment
  - Monitoring and management of hyperstimulation
  JCAHO. “Preventing Infant Death during delivery” Sentinel event alert #30, 2004

Perinatal Bundles
- Improve Documentation and Evidence Collection in cases of potential fetal asphyxia
  - Umbilical Cord Blood Gas Analysis
  - Nucleated Red Blood Cells
  - Mandated Bilirubin Testing
  - Fetal Heart Rate Monitoring Results
  - Examination of the Placenta
  Zurich: Perspectives: a risk management tool for the healthcare industry, August 2006

Shoulder Dystocia
- The incidence of shoulder dystocia increases progressively as birth weight increases over 4000 grams.
- However, the majority of extremely large infants do not have shoulder dystocia.
- Approximately 50 percent of cases of shoulder dystocia occur in infants whose birth weight is less than 4000 grams.

Shoulder Dystocia
- Litigation usually takes one of two tacks
  - Prevention: The obstetrician should have recognized the risks and performed a cesarean section
    - Risk Factors: previous shoulder dystocia, diabetes, prolonged labor, operative vaginal delivery, macrosomia
    - Obstetrician caused the injury to the brachial plexus
    - Excessive traction
      - most recently, claims for permanent brachial plexus injuries have exceeded $2M, so settlement less likely
Shoulder Dystocia - prevention of litigation

- Prevent when you can
- Prepare for when you can’t
  - Drill/Rehearse: assume every delivery will be complicated by a shoulder dystocia
  - Team training
  - Use conventional methods in a systematic way
  - Document what was done (assistant, nurse, etc)
  - Continue dialogue with patient/full disclosure

Return on Investment: Patient Safety Initiatives have paid off at the Harvard Hospitals

64% of claims come from these four high-risk areas.
percentage of all claims asserted 1992-2006, N=1,164 claims

- Diagnosis
- Surgery
- Medication
- Obstetrics

Ob no longer the "loss leader"

Source: CRICO/RMF – Captive Insurance Company of the Harvard Medical Institutions; Closed Claims, 2002-2006

Reducing Ob Litigation Through Alterations in Practice Patterns

- Reviewed 189 closed perinatal claims from HCA from 2000-2005. Identified 4 major patterns
  - 23% of cases involved delayed physician evaluation of a non-reassuring fetal heart rate tracing and delayed delivery
  - 45% of fetal monitoring cases in non-VBAC cases avoidable if health-care workers followed published, checklist-driven protocols for administration of oxytocin, misoprostol, and magnesium sulfate
  - 80% of cases involving VBAC were avoidable had the procedure been limited to spontaneous labor progressing without augmentation and in the absence of repetitive moderate/severe variable decelerations
  - In 54% of shoulder dystocia cases payment was primarily driven by poor documentation


Target Areas: OB has seen reduction in frequency at the Harvard Hospitals

<table>
<thead>
<tr>
<th>Subtotal</th>
<th>2000-1999</th>
<th>1990-1999 levels</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diagnosis</td>
<td>26%</td>
<td>23%</td>
</tr>
<tr>
<td>Surgery</td>
<td>32%</td>
<td>22%</td>
</tr>
<tr>
<td>Obstetrics</td>
<td>19%</td>
<td>19%</td>
</tr>
<tr>
<td>Medication</td>
<td>24%</td>
<td>23%</td>
</tr>
</tbody>
</table>

A defense attorney’s Top Ten List to prevent/defend ob cases

1. Beside Manner Counts - patients do not want to sue physicians they admire/respect
2. Tickler systems to monitor:
   a. Referrals to other physicians and receipt of any follow-up correspondence
   b. Receipt of any diagnostic testing and evidence that you reviewed the results with the patient
3. Use a form that allows patients to record their own medical care/history between visits

Courtesy of Eric Stockman (Neubert & Pepe)

Introduction of a patient safety program in YNHH

- Outside expert review
- Protocols and guidelines
- Obstetric Safety Nurse
- Anonymous Event Reporting
- The Obstetric Hospitalist-Yale On-Call Attending
- Obstetrics Patient Safety Committee
- Safety attitude Survey/Questionnaire
- Team Training/Crew Resource Management
- EFM Certification
- Evaluation of a Patient Safety Program

A defense attorney’s Top Ten List to prevent/defend ob cases

4. Assume that any breast lump is cancer until proven otherwise
5. Document all informed consent discussions fully
6. Have a plan in place for situations—emergency c-sections, shoulder dystocia—communicate the plan to the delivery team and document such communication

A defense attorney’s Top Ten List to prevent/defend ob cases

7. Offer and document potential elective cesarean section in cases at risk for shoulder dystocia, especially if EFW>5000gms (4500gm in diabetic)
8. Use a written shoulder dystocia plan and document the intervention used in contemporaneous fashion
9. Acknowledge adverse outcomes, apologize for them, and document them accordingly

Questions?