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A LEGAL INFORMATION SHEET FOR NURSES

Obstetrical nursing

Canadian Nurses Protective Society

Is obstetrics a legally high risk area of nursing practice?

There are several factors which lead to the characterization of obstetrics as a legally risky area of practice. Firstly, obstetrical lawsuits are relatively common. According to Canadian Nurses Protective Society [CNPS] statistics, obstetrical and neonatal nurses most frequently report lawsuits and occurrences to CNPS.[1] Secondly, it is not possible to predict which babies will have poor outcomes. In lawsuits about babies compromised at birth, the majority of the babies are full term and of normal birth weight.[2] In other words, these babies are from the largest obstetrical patient population and have features which may contribute to an initial assessment of being at lower risk for a poor outcome. Thirdly, the financial cost of defending, settling or losing such cases is very high. The psychological impact of being involved in a legal process is harder to quantify but cannot be denied.

What aspects of obstetrical nursing require particular diligence?

a) fetal health surveillance during labour

The law recognizes that it is primarily the responsibility of a nurse to monitor fetal health during labour: "Within the obstetrical team concept, each of the professionals involved has a particular role and one of the responsibilities of the staff nurse is to properly monitor fetal status and report concerns either to a team leader, an intern, a resident or the staff obstetrician." [3] Various guidelines have been developed to assist practitioners in doing the appropriate type and amount of fetal monitoring during labour, and in response to maternal and fetal intrapartum health.[4] A legal determination of what constituted reasonable nursing care in the circumstances, including fetal monitoring, will not be based solely on any set of clinical guidelines. Institutional policies, availability of equipment and personnel, and facility type may contribute to a court's determination of the standard of care.

A recent lawsuit shows that appropriate intermittent auscultation during the first and second stage of a healthy and uneventful labour does not constitute negligence even if the baby suffered deficits allegedly related to its birth.[5] The mother had an uneventful pregnancy and labour. The fetal heart rate [FHR] was assessed throughout first and second stage with a Doptone, with FHRs recorded every 3-4 minutes, the shortest interval being 2 minutes and the longest being 8 minutes. As the head was crowning, the FHR could not be detected. This was attributed to the fetal position deep within the pelvis. Sixteen minutes had passed since the last audible FHR when the doctor performed an episiotomy. The baby was promptly delivered but suffers from CP. It was alleged that the nurses were negligent for failing to adequately monitor mother and fetus thereby providing insufficient data to the doctor. The nurses testified at trial and their chart entries were used as evidence. The nurses documented assessments revealed constant nursing attendance during second stage which met the standard of care. Therefore, the negligence claim against the hospital was dismissed.[6]

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b) monitoring the effect of measures taken to induce or augment labour

The effects of cervical ripening agents and uterine stimulation on the fetus must be carefully monitored. In a recent lawsuit, the compromised baby's parents asserted that the electronic fetal monitor strip showed uterine hyperstimulation after an oxytocin infusion was commenced. The court held that both the doctor and nurse were negligent in disregarding the information on the tocograph, saying, "while information on the monitoring strip is not determinative, it is widely recognized and

accepted in the obstetrical profession as a valuable source of information which must be considered in conjunction with palpation and any other clinical signs. It is not a source which should be ignored, or rejected out of hand without consideration, reassessment and discussion." [7]

c) neonatal resuscitation

Those who care for labouring women and fail to implement the basics of neonatal resuscitation risk being found negligent. For example, a nurse was found negligent in her attendance at a preterm breech delivery.[8] The court held that the nurse should have assisted the woman as she gave birth instead of busying herself setting up the delivery room. She should have dried the baby, placed him in a warmer, suctioned him and given him oxygen. None of these things had been done when the doctor arrived 3 minutes after delivery to find the baby between his mother's legs, not breathing, flaccid, blue and cold.

d) mentoring colleagues new to obstetrics

Skill and expertise come only with time so it is important to ensure that novice obstetrical professionals, both medical and nursing, know where to receive help. The importance of mentoring is illustrated in a lawsuit in which a newly-registered nurse and an experienced obstetrical team leader were both found negligent.[9] The new staff nurse was negligent for failing to: recognize a non-reassuring fetal heart rate pattern of greater than 2 hours duration; implement conservative measures (repositioning, etc.); and contact a physician when conservative measures were not successful. The team leader was found negligent in her supervision of the new nurse and her communication with the health care team. When the new nurse told the team leader she was having problems handling two labouring patients and needed help, the team leader told her she worked on a busy unit and would have to be more organized. The team leader did not evaluate the situation or ensure that an experienced nurse did so.

e) documentation

Chart entries should reflect the most recent assessments as they are done to ensure treatment decisions are based on accurate information. If documenting on a flowsheet, avoid simple checkmarks that do not identify the author. Make narrative nursing notes when needed. Relevant communications with team members should be noted. Ensure the clock on electronic equipment is recording the correct time. Remember that proper documentation can be used to exonerate you.

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1. Canadian Nurses Protective Society, Annual Report 2001.
2. Society of Obstetricians and Gynaecologists of Canada, ALARM Course Syllabus (8th ed) @2.
3. *Granger (Litigation guardian of) v. Ottawa General Hospital*, [1996] O.J. No. 2129 (Ont. Gen. Div.) at para. 97.
4. For example, Society of Obstetricians and Gynaecologists of Canada, Clinical Practice Guidelines, Fetal Health Surveillance in Labour, No. 112, March 2002.
5. *Johnson-Coy v. Barker,* [1995] B.C.J. No. 862 (B.C.S.C.).
6. The negligence claim against the doctor was also dismissed. The judge found her decision-making about intervening to hasten delivery met the standard of care. For more information on the legal relationship between nurses and their employers, see infoLAW®s Negligence (Vol. 3, No. 1, September 1994), Vicarious Liability (Vol. 7, No. 1, April 1998), and Malpractice Lawsuits (Vol. 7, No. 2, September 1998) at www.cnps.ca.
7. *Kuan (Guardian ad litem of) v. Harrison*, [1997] B.C.J. No. 1215 (B.C.S.C.) at para. 45.
8. *Martin v. Listowel Memorial Hospital*, [1998] O.J. No. 3126 (Ont. Gen. Div.).
9. *Supra* note 3.

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N.B. In this document, the feminine pronoun includes the masculine and vice versa except where referring to a participant in a legal proceeding.