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How court decisions changed our behavior in feto-maternal medicine*

Austrian experience concerning medico legal aspects of caesarean section

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Obstetrics has always been a medical discipline where a normal situation can change very rapidly to an emergency and high risk situation for both mother and fetus. In earlier times catastrophes were accepted in the course of birth as fateful and inevitable, medical doctors were virtually inviolable and medical errors were not discussed but kept silent; patients' rights in the present sense were unknown.

Modern medicine with its high-tech devices awakens the feeling of extreme safety and permanent control of almost any situation in the clients. In case of a bad outcome, injury or death during obstetrical treatment someone has to be blamed for so that the chance for malpractice litigation and successive legal responsibility with subsequent increased fees for malpractice insurance has increased during the last decades. With some delay, in comparison to the situation in the USA, this tendency of increased judicial disputes in the field of obstetrics has come to Austria.

The effect of claims on obstetric care becomes obvious by the changed approach in some obstetric issues as well as the change of risk propensity in our actions. Careful documentation and observation of guidelines and standards of care are very helpful in decreasing litigation and reducing the number of indefensible malpractice claims.

Keywords: Medico-legal situation, Caesarean section, Birth injury, malpractice claims

A bírósági határozatok hatása orvosi viselkedésünkre a feto-maternális medicina területén – Osztrák tapasztalat a császármetszés orvosi-jogi vonatkozásaival kapcsolatban

A szülészet mindig is azok közé az orvosi területek közé tartozott, ahol egy normális szituáció hirtelen akut rizikóhelyzetté változhat mind a születendő gyermek, mind pedig az anya számára. Korábban a szülés kapcsán történt katasztrófákat végzetszerűnek és elkerülhetetlennek, az orvosokat pedig gyakorlatilag sérthetetlennek tartották. Az orvosi hibákra nem derült fény, nem kerültek feldolgozásra, és a betegek mai értelemben vett jogai ismeretlenek voltak.

A modern orvostudomány high-tech eszköztárával a nagyfokú biztonság és a folyamatos kontroll érzetét kelti a felhasználóban szinte bármilyen helyzetben. Rossz kimenetel esetén a szülészeti kezelés során bekövetkezett sérülés vagy haláleset miatt valakit hibáztatni kell. Ennek kapcsán az utóbbi évtizedekben megnövekedett az orvosi műhibaperek száma és az orvosok jogi és anyagi felelősségre vonása, valamint ezzel parallel megnövekedett az orvosi tevékenységre vonatkozó biztosítások díjai is.

Az Amerikai Egyesült Államokhoz képest néhány év késéssel Ausztriában is egyre gyakoribbak a szülészet területén folytatott orvosjogi eljárások.

A szülészeti ellátással kapcsolatos jogi viták hatása megnyilvánul számos szülészeti kérdés megváltozott megközelítési módjában, valamint döntéseink során a kockázati hajlandóság változásában. A gondos dokumentáció, az irányelvek és az egészségügyi előírások betartása hasznos a peres eljárások és a védhetetlen orvosi műhibaperek számának csökkentése érdekében.

Kulcsszavak: orvosjogi helyzet, császármetszés, szülési sérülés, műhiba perek

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Introduction

Emergency situations in obstetrics and severe complications during delivery are happening relatively seldom, in some cases these complications occur unexpectedly, in other cases incidents arise from typical constellations where poor outcome can – or must be – expected in advance.

The relationship between patients and their doctors has certainly changed over the past 50 years. In the past, the role of the physician as a helper in distress was certainly similar, but there was a clearer authoritarian situation between the patient and medical doctors which were far-above-the-things. It is no coincidence that the term "god in white" has been remembered for many years. At that time it was difficult to imagine causing legal dispute against his medical doctor. However, multifactorial causes have, brought a significant change of this situation in our country. This change reached our country with a delay of about ten to fifteen years compared to the situation in America or England.

Technical possibilities of highly specialized medical equipment (monitoring possibilities in the delivery room, e.g. heart rate tracking and computerized CTG), ultrasound technology and the developing prenatal medicine together with the possibility of computerized data storage of these critical examinations increased the expectations of our patients.

The changing role of woman in our society the fact of higher education and subsequent later maternity clearly improved women´s self-image and self-confidence. The activities of the lawyers did the rest, and the advertising efforts encouraged the patients to bring their claims into the courtrooms. Blatant advertising fortifies women because they are informed that in the vast majority of the cases a satisfactory out of court solution can be achieved and that in other cases reasonable damages and compensation for pain and suffering or compensation for permanent consequences can be reached. In addition the layers pretend to have influence in the outcome of a medical law case because they would suggest the appropriate medical experts for the lawsuit.

Due to the Austrian law and the legal practice some immovable and generally accepted medico-legal statements can be made.

Every medical treatment is an injury of patient's body.

A physical injury is generally accusable

Patient´s approval after informed consent justifies the process of medical treatment but it is most important to understand that a patient can only agree if he knows what for he agrees. Therefore appropriate information has to be given to the patient at the right time before examinations and before operations. This information may only be carried out by the medical doctor, it is not delegable. It has to deal with possible complications even if they are very rare or unexpected but severe and specific for this operative procedure. Urgency and need for medical treatment is inversely proportional to the amount and time of preoperative medical information. The patient must not be able to say: If I had known this, I never would have agreed to this procedure.

It is sometimes easier to blame a medical doctor for a wrong consultation (bad information or lack of information) than giving evidence that a wrong treatment was performed or a wrong therapy was used. It is easier for the medical doctor to proof that information has been given to the patient if written consent has been signed by both patient and medical doctor. There is still a Latin aphorism "Quod non est in actis non est in mundo" which is of prime importance: If the documentation in the medical records about a certain action, discussion or treatment is missing the judges can argue that this action never happened.

The reason for the increasing number of legal cases and the extremely high medico legal vulnerability of practicing obstetricians is that there is the possibility of brain damage for the fetus/newborn due to the lack of oxygen during the delivery, or the possibility of an injury of mother and child during vaginal operative delivery, or plexus palsy of the newborn after shoulder dystocia.

This "obstetric damage" is a serious cut in the entire lifestyle and life planning for all those affected and therefore obstetricians are often blamed for a missing, a late or a wrong medical action.

A birth defect or a problem during delivery can be assumed if the newborn shows typical symptoms after typical situations. If there is a temporal relationship between baby´s condition and the delivery or the course and length of birth the question of avoidability arises.

A birth defect is avoidable if reaction required findings are not overseen by doctor or midwife so that therapeutical reaction does not come too late. If a case is subsequently submitted to a court the patient (=injured party) must provide full evidence of all the facts on which the claim is based in the opponent (medical doctor) denies the complaint. This also applies to claims for damages of a patient against his medical practitioner for faulty treatment, since the doctor usually does not guarantee the occurrence of a certain success but "only" the careful and artful treatment ("lege artis").

In the case of grave error in treatment, the Austrian law has, for reasons of equity, developed evidence to the benefit of the patient.

Such is the case if the misconduct of the practitioner is simply not understandable from an objective medical point of view ("such an error should simply not happen").

Grave treatment errors of the physician leads – in favor of the affected patient – to a punctual reversal of the burden of proof regarding the causality between physician error and damage to health.

In the Study of Lateefa O. AlDakhil, he investigated 463 malpractice claims in a 5 year period in Saudi Arabia, all the cases that dealed with maternal or infant death were indefensible; especially in those cases where uterine rupture was the reason for infant´s death the signs of this obstetrical

catastrophe were misinterpreted or a physician was not immediately available.

Such an obvious situation to the disadvantage of the doctor is very rare. Normally all the facts are meticulous scrutinized by a medical expert, which was appointed by the judge in the course of the legal proceedings. If anything went wrong or if a complication occurred during delivery the documentation of any event is of prime importance. Thorough documentation of anything that happened or did not happen with a detailed timeline of those actions is the best tool to reduce risks and costs of litigation.

In accordance with recent publications from America [2] we notice that many obstetricians in Austria decrease their number of high risk obstetric patients and some of them completely stopped performing obstetrics in private hospitals. All those high risk obstetric cases are centrally pooled in tertiary perinatal care centres.

The Austrian Society of Medical Law published ten golden rules for the appropriate interaction with patients to avoid liability claims in 2009 [3]. I am convinced that the Hungarian colleagues will also have clear advantages in complying with these rules.

Observe guidelines and law

- Never leave the area of your expertise (observe the limits of your specialisation).
- State of the art knowledge is demanded.
- The indication for any kind of medical intervention should (or must be) correct (otherwise you must have a good and well documented reason).
- Respect the personality and individuality of your patient.
- Detailed and structured counselling and preoperative information-DOCUMENTATION!!!
- Always take patients' complaints seriously.
- No (negative) comments about other colleagues.
- Adequate insurance coverage.
- Never give acceptance of a debt in front of your patient!

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