Medicolegal Aspects of Obstetrics — the Role of the Midwife in Hong Kong

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With the establishment of Hong Kong's first Midwifery Clinic in 1993, midwives have taken up a direct and independent role in the delivery of obstetric care in a number of hospitals. However, the number of malpractice cases involving childbirth issues has risen dramatically in recent years. Most obstetric claims involve alleged injury to the fetus, neonate, or mother during labour and delivery. As frontline workers directly providing antenatal and intrapartum care, midwives are increasingly prone to be involved in potential medical litigation. Nurses may be accused of negligence when they fail to demonstrate reasonable and prudent behaviour in their practice. If nurses are involved in obstetric litigation, the hospital is vicariously liable for any breach of their duties by employees working within the scope of their employment. However, the courts recognise midwifery as an autonomous profession responsible for its own practice and possessing a unique body of knowledge. In the future, it is likely that the midwife may be sued as an individual defendant or co-defendant. Hong Kong midwives need to face this challenge and not only embrace wholeheartedly the concepts and practice of modern midwifery, but also demonstrate that they are in a position to discharge their duty and responsibility, to maintain their standards, and be prepared to stand up and defend this status.

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Introduction

Tremendous changes have occurred in the provision of obstetric services in Hong Kong during the past decade. While there has been an improvement in obstetric and neonatal care, clients have also become better educated, have higher expectations, and are generally more demanding. At the same time, midwives have developed a new role going well beyond the traditional Hong Kong model, following the establishment of a Midwifery Clinic in Kwong Wah Hospital in 1993[1]. Since then, midwifery clinics have been established in a number of hospitals, and midwives have now assumed a direct and independent role in the delivery of obstetric care.

In addition to the antenatal assessment of healthy women, important aspects of midwifery care include detecting complications in low-risk pregnant women, and accessing medical assistance when necessary. The Midwifery Clinic service is based on the philosophy of continuity of care throughout the childbearing cycle, which is woman-centred and responsive to individual needs. Many studies have demonstrated that the provision of continuity of care by midwives confers many benefits[2-4], resulting in higher maternal satisfaction and the achievement of more spontaneous vaginal deliveries by reducing medical intervention and the need for analgesia. Moreover, the establishment of a Midwifery Clinic can further enhance the professional development of and job satisfaction for midwives working in the obstetric unit.

However, obstetrics is a high-risk specialty. Together with gynaecology, obstetrics accounts for the highest proportion of legal claims[5]. Obstetric care was involved in 61.5% of reported claims in a survey conducted between 1992 and 1995 by the American College of Obstetricians and Gynecologists[6]. Medical litigation is becoming more frequent in obstetrics, and the number of malpractice cases involving childbirth issues has risen dramatically[7]. The large settlements associated with these cases have gained the attention of health care professionals and the public. Most obstetric claims involve alleged injury to the fetus, neonate, or mother during labour and delivery. According to the

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guidelines published by the Association of Women's Health, Obstetric and Neonatal Nurses, the most common allegations made in obstetric litigation are: inadequate intrapartum fetal monitoring, and / or an inadequate response to signs of fetal compromise, and / or an inability to interpret abnormal cardiotocograph (CTG) traces, which is of particular importance to risk management[8].

The Role and Responsibility of Midwife

The roles and activities performed by midwives are clearly defined in the handbook issued by the Midwives Council of Hong Kong. Apart from being an independent practitioner, a midwife also works as part of a multidisciplinary team. A midwife works within the paradigm of normal childbirth, and plays a participatory role in the detection and management of abnormalities and complications. A midwife also needs to provide holistic care to a woman and her family by promoting and protecting the safety and health of the mother and her infant[9]. The midwife plays a pivotal role, providing care during the entire process, from the clinic to the wards and finally back to the clinic. This involves history taking, physical examination, assessment and monitoring, providing necessary information, education, liaison, and, overall, ensuring the well-being of women in labour.

Optimal care depends on good communication. A midwife must be able to communicate effectively with colleagues and obstetricians to ensure safe and continuous care for mothers and babies, as well as with the mother and her partner to establish good rapport, enhance the quality of care, and engender trust. Documentation is another important way in which the midwife communicates with colleagues, obstetricians, and other allied health professionals. The midwife must document everything including examination findings, test results, symptoms, and complaints. In case of complications or unexpected problems, it is imperative these special events and the responses to them are documented in chronological sequence. In women with birth plans, the birth plan, if available, should be attached to the record.

As a frontline worker providing intrapartum care, skills and knowledge concerning the application and interpretation of the CTG is paramount for perinatal nurses. It has been pointed out that the ability to perform and interpret the CTG independently has become a standard requirement for midwives making fetal assessments[10]. Failure to adhere to protocols may result in a negative outcome for the fetus and contribute to claims of nursing negligence[11]. A midwife is legally liable for assessment errors and interpretations of fetal heart rate patterns that result in fetal or neonatal injury or death.

There are other technical skills also required of today's frontline midwives. They are expected not only to be proficient and competent in the interpretation of the CTG, but in other technical skills such as performing ultrasound examinations and the repair of episiotomies and perineal lacerations. They must also be sensitive to the mothers' emotional reactions[1]. Midwives are required to undertake periodic refresher courses to maintain their registration, and proactively equip themselves with the necessary skills and knowledge. This helps to maintain the standard of practising midwives and also keep midwifery abreast of modern science.

Involvement of the Midwife in Potential Medical Litigation

There are two major areas where midwives may be involved in medical litigation. The first and foremost concerns communication. The second involves technical and professional competence. Communication is the more important aspect, because, especially in a multidisciplinary team, ineffective or failed communication may have undermined or negated the results of correct or appropriate decisions, procedures, and interventions. One means of communication is the written record. The nursing notes usually provide a complete chronological record of the clinical condition of the patient, the involvement of medical teams, and the sequence of events. This record constitutes a major defence against any allegations of medical negligence. The timing of events is particularly important, especially when the patient's clinical condition has become abnormal. When catastrophes occur, one nurse should be responsible for regularly recording the time. In some units, combined medical / nursing notes are kept in the medical record. Gaps in the record can lead to speculation that 'if it wasn't written, then it didn't happen'. If the medical record is precise and concise, it will be the defendant's best ally. On the other hand, missing

information, incorrect timing of entries, incorrect or unclear entries that were not amended and countersigned afterwards, or frankly incorrect information or entries, can create an impression of mismanagement.

In malpractice claims involving communication issues, allegations often relate to interactions between nurses, patients, and obstetricians. Questions frequently asked in legal proceedings centre on whether the nurse communicated relevant clinical information to the obstetricians; how the chain of command was utilised to protect the safety and well-being of the pregnant woman and her fetus; and whether the patient was adequately advised of the risks and benefits of a treatment or procedure and had provided informed consent. For personnel involved in defending a claim, their only recall of the event often comes from reading the medical record months or years later, especially when the claim is made long after the alleged incident. As a midwife, it is beneficial to write special notes or an incident report in response to events that may have medicolegal consequences.

Technical and professional competence issues arise from events occurring during the intrapartum period. McMullen[12] identified five major omissions of labour and delivery nurses that led to liability. These were: failure to monitor the maternal and fetal status appropriately; inappropriate use of oxytocin, or inappropriate monitoring of its use; failure to notify doctors in a timely manner; initiation of procedures without adequate client information or consent; and improper sponge or instrument counts during caesarean sections. Midwives may not have been directly involved in these issues but nowadays, nurses may be called as co-defendants in litigation, and in many instances they are called as witnesses. In court, the statements of nurses may be checked against the record, and falsification of records, especially after being summoned by the court, is a criminal offence.

Here in Hong Kong, when nurses are involved in obstetric litigation, it is the hospital that is being sued because nurses are hospital employees. The hospital is vicariously liable for any breach of duties by its employees working within the scope of their employment. Vicarious liability is almost automatic when a nurse is found negligent[13]. The nurse has a duty to apply the standard of care, which is a legal doctrine defined as "the degree of care that should be exercised by the average professional nurse under similar circumstances". Even for nurse-midwives in a multidisciplinary team, writing in the medical record that "physician has been notified" does not free them from additional legal action. However, at present, midwives are much less frequently targeted in malpractice lawsuits than physicians and hospitals.

Examples of Nursing Issues in Malpractice Claims

Communication

A woman, who weighed 142 kg, was admitted at 42 weeks of gestation with irregular uterine contractions. The admitting nurse had difficulty monitoring the uterine contractions and fetal heart rate, and also had difficulty correlating the fetal heart rate pattern with the uterine activity because of the woman's thick abdomen. She missed the onset of late decelerations and did not notify the obstetrician or request the placement of a fetal scalp electrode. By the time the obstetrician returned for reassessment, the fetal heart rate was recorded as 47 beats per minute. Although an emergency caesarean section was performed, the neonate did not survive. The hospital agreed to pay the woman US$725,000 before trial, for failing to properly monitor her fetus during labour[14].

This case illustrates the legal duties of the registered midwife when conducting fetal heart rate assessments. The nurse is required to act independently to protect the well-being of the mother and her unborn child and to communicate with the obstetrician in a timely and appropriate manner. It is reasonable to expect the intrapartum nurse to detect abnormal patterns should they appear, and to report the findings to the attending obstetrician in time for necessary intervention[15].

Documentation

A novice nurse was assigned as the named-nurse to take care of a 42-year-old woman who was in labour. Electronic fetal heart monitoring was initiated and late decelerations and periods of bradycardia were recorded. The novice nurse testified that she "knew something must be wrong" with the traces and attempted to get help without success. She claimed that she spoke to the charge-nurse and had attempted to page a resident three times. However, all these actions were not charted in

the medical record. The charge-nurse testified that the novice nurse had spoken to her, but had not described the trace patterns, and the resident asserted that he received only one call. The neonate was delivered, but was asphyxiated and had spastic quadriparesis. A US$2.15 million settlement was agreed upon before trial[16].

It is imperative that a novice nurse is closely supervised and guided, especially when performing fetal heart assessments. She should clearly and accurately document the actions that she has taken, such as the charting of all conversations and consultations. The nursing record constitutes the defence against any allegations of medical or nursing negligence. Accountability also requires that the nurse seeks appropriate consultation and advice from another skilled nurse or obstetrician when technical difficulties assessing the fetal heart rate arise. In the hands of inexperienced or untrained nurses, electronic fetal heart rate monitoring can become a liability[17].

Conclusion

In medical malpractice litigation, negligence is the predominant basis of liability. Nurses may be accused of negligence when they fail to demonstrate reasonable and prudent behaviour in their practice. In order to establish a verdict of malpractice, the patient's (plaintiff's) attorney must establish four elements: the existence of a duty by the professional within the context of a relationship; the applicable standard of care and its violation (breach of duty); a compensable injury to the patient; a causal connection between the violation of the standard of care and the patient's injury[7].

The courts recognise midwifery as an autonomous profession responsible for its own practice and possessing a unique body of knowledge[7]. Midwives are rightly jealous of their status as independent practitioners and in law they are entitled to assume full responsibility for the care of women in normal labour[18]. In the future, it is likely that the midwife may be sued as an individual defendant or co-defendant especially the named-nurse, nurse-in-charge, and the nurse-practitioner.

Along with the recognition of their unique and autonomous professional status, comes legal responsibility. Hong Kong midwives must now face up to this challenge and demonstrate to both their colleagues and clients that they not only embrace the concepts and practices of modern midwifery wholeheartedly, but are also able to discharge their duties and responsibilities, to maintain their standards, and to stand up and defend this status.

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