Royal College of
Obstetricians and Gynaecologists

Bringing to life the best in women's health care

Disputes in the UK Due to Poor Medical Intervention Pre-Judicial Process, Judicial Process Their Reflections on Society, Physicians and Patients, Recommendations

Professor James Walker,

Professor of Obstetrics and Gynaecology and Consultant Obstetrician, St James's University Hospital, Leeds UK, Former Senior Vice-President, RCOG (Global Health)

Medicolegal Expert

Assessor of Doctors in Difficulty

Medical Law in UK

Medical Heath Law & ethics

- Legal aspects
  - Criminal (Police and Crown Prosecution Service)
  - Coroners Court (decision on *cause* of death)
  - Regulatory (General Medical Council)
  - Litigation (civil courts)
- Professional codes
  - Standards (Royal Colleges)
- Ethics
  - Patient rights (basic human rights)

Medical Law in UK

Medical Heath Law & ethics

- Legal aspects
  - Criminal (Police and Crown Prosecution Service)
  - Coroners Court (decision on *cause* of death)
  - Regulatory (General Medical Council)
  - Litigation (civil courts)
- Professional codes
  - Standards (Royal Colleges)
- Ethics
  - Patient rights (basic human rights)

What is NHSLA?

- National Health Service Litigation Authority
- Created in 1995
- Part of the NHS
- Not an insurance company
- Covers England only

- “Insures the hospitals”
- Cases against institutions not doctors
- Therefore lawyers do not directly defend the doctor but the system.

- Doctors have own insurance

- Risk Management initiatives (e.g. CNST Maternity Standards)

- Pooling of resources and expertise

- Standard approach to defence

Litigation

Outcome of clinical claims handled by the NHSLA in the past ten years

(all clinical schemes, all claims made between 1/4/1996 and 31/3/2006)

Outcome	Percentage
Abandoned by claimant	38%
Settled out of court	43%
Settled in court (including cases where court approval of a negotiated settlement is required, for example to protect the interests of a minor child*	4%
Outstanding	15%
Total	100.00%

* Of the 87 clinical negligence cases actually litigated in the past two financial years, 26% were settled in court in favour of the claimant, 68% in favour of the NHS and 6% were settled mid-trial.

NHSLA
July 2006

Percentage of Open Claims by Speciality

Obstetrics	-	23.1%
Orthopaedics	-	12.9%
General Surgery	-	9.2%
Paediatrics	-	9.2%
Casualty/A&E	-	8.5%
Gynaecology	-	5.0%
General Medicine	-	4.7%
Psychiatry	-	2.5%
Others	-	24.9%

£5.75m for girl left brain damaged at birth

- Suffered severe brain damage at birth
- Laura Hegarty, born with cerebral palsy
  - following a traumatic delivery
  - at St James's University Hospital in August, 1998.
- Claimed that
  - staff failed to identify mother as high risk
  - did not react quickly enough to signs of foetal distress
  - caused the baby to be deprived of oxygen
- Compensation used to pay for the care

Value of Open Claims by Speciality

Obstetrics	-	65.4%
Paediatrics	-	10.9%
Casualty/A&E	-	3.3%
Orthopaedic Surgery	-	2.8%
General Surgery	-	2.1%
General Medicine	-	1.6%
Neurology	-	1.4%
Anaesthesia	-	1.0%
Gynaecology	-	1.0%
Others	-	11.5%

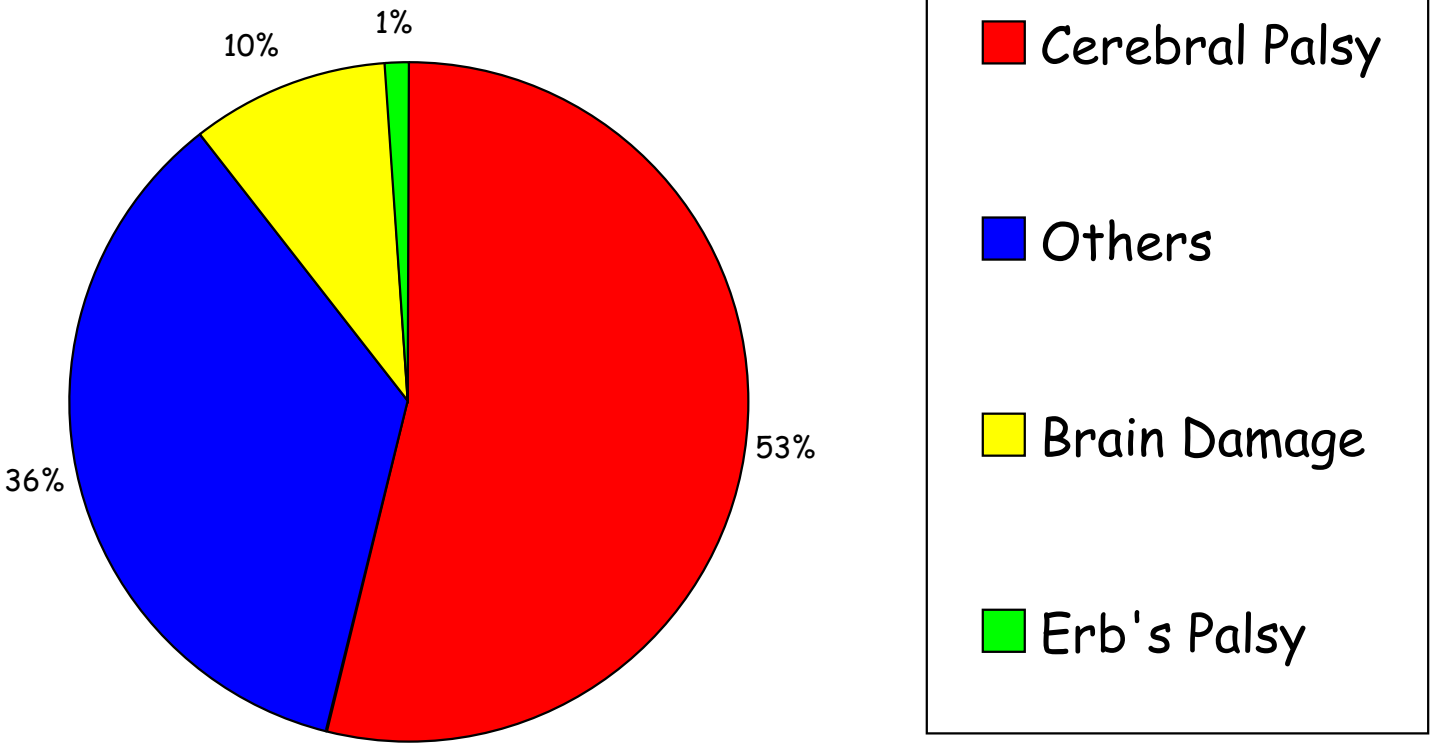
Value of Open Claims by Speciality

		£m
Obstetrics	-	4,445
Paediatrics	-	738
Casualty/A&E	-	225
Orthopaedic Surgery	-	191
General Surgery	-	145
General Medicine	-	95
Anaesthesia	-	70
Gynaecology	-	67

Obstetrics Litigation

- Cerebral palsy
  - Failure to assess CTGs
  - Failure to act in time
- Factors
  - Staffing
  - Communication
  - Training
- Risk assessment
  - Inappropriate care plan
  - Failure to follow guidelines

Breakdown of Obstetric Claims (by value)



Gynaecology – Most Frequent Causes of Claims

Intra-operative problems	-	27.6%
Failure/Delayed diagnosis	-	16.0%
Failure to recognise complication	-	8.5%
Delayed treatment	-	6.0%
Lack of consent	-	5.7%
Failed sterilisation	-	5.7%
Other causes	-	30.5%

Litigation

- Drivers
  - Negligence
  - Damage
  - Causation
  - Quantum

Negligence

- Someone has done something wrong
  - Punish
  - They should not be working
  - Mistakes
  - Botched

  - Stop it happening again

Damage

- If there is no damage there is no case
  - Irrespective of the error made
- Cases are brought for compensation not blame

- Death
- Cerebral Palsy
- Baby skull fracture
- Bowel perforation at laparoscopy
- Damage to ureter or bladder

Causation

- If there is damage
  - “something must have gone wrong”

- Inappropriate action
- Failure to act
- Failure to act in time
- Failure to realise the complication

Damage

- Even if there is damage there may no case
  - Irrespective of the standard of care

- Death - it happens
- Cerebral Palsy - only 10-15% caused by birth injury
- Baby skull fracture - associated with normal delivery
- Bowel perforation at laparoscopy - complication
- Damage to ureter or bladder - complication

The Expert Witness

- "It is necessary that expert evidence presented to the court should be and should be seen to be the independent product of the expert uninfluenced as to form or content by the exigencies of litigation."
  - Lord Wilberforce *Whitehouse v Jordan*, [1981] 1 WLR 246,

The Role of the Expert

- Impartial advice
- Do not need to be an “expert”
- Experienced in the relevant practice
- Review the merits of the case
- Present a clear history and opinion
- Be able to defend it in court
- Adversarial system

Opinion of case

- Impartial
- Uninfluenced by sides
- You have to justify what you say
- Can you defend it in court

- Break it up into relevant sections
- How do they relate to each other
- Remember negligence does not imply cause

Opinion of case

- Would you have done it?
- Would anyone have done it?
- Is it defendable?

- Need to prove that the doctor
  - Should have known what to do
  - Should not have done what he/she did
- Need to justify it with literature
- That doctors would be expected to read

Juries

The Bolam Criteria

- "[A doctor] is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art . . .
- Putting it the other way round, a man is not negligent, if he acts in accordance with such a practice, merely because there is a body of opinion who would take a contrary view."
  - *Bolam v Friern Hospital Management Committee* [1957]

Cause

- Proving negligence is not enough
- Did it cause the damage?
- Often cause requires other expert
- Only give opinion in your area
  - Comment on other aspects
  - “your understanding”
- Probability of damage
  - More than 50% likely

Outcome of clinical claims handled by the NHSLA in the past ten years

(all clinical schemes, all claims made between 1/4/1996 and 31/3/2006)

Outcome	Percentage
Abandoned by claimant	38%
Settled out of court	43%
Settled in court (including cases where court approval of a negotiated settlement is required, for example to protect the interests of a minor child*	4%
Outstanding	15%
Total	100.00%

* Of the 87 clinical negligence cases actually litigated in the past two financial years, 26% were settled in court in favour of the claimant, 68% in favour of the NHS and 6% were settled mid-trial.

NHSLA
July 2006

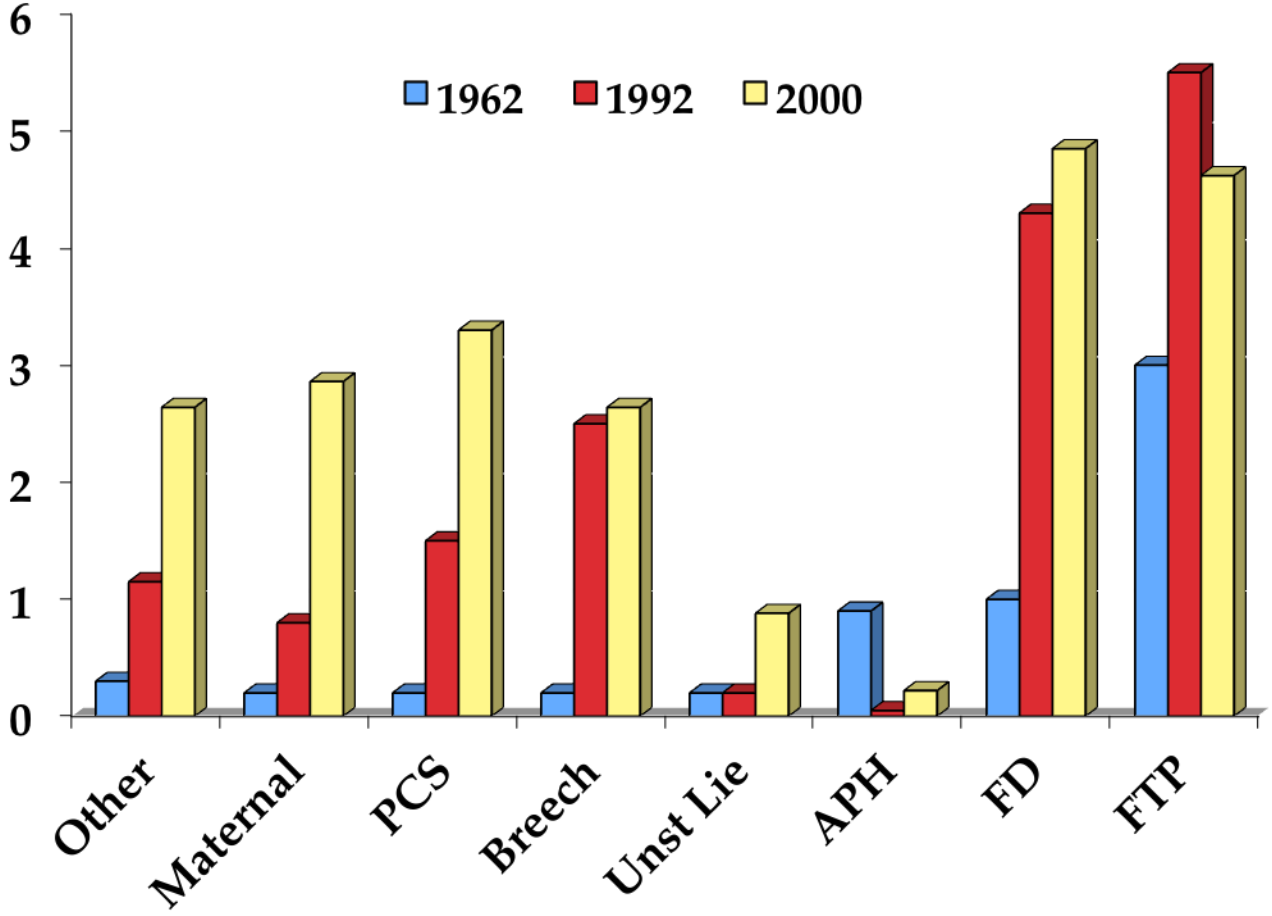
Medical Law in UK

- Police Action
  - Damage or death caused by gross negligence
    - Medical manslaughter
  - Prosecution must prove (beyond reasonable doubt)
    - Existence of duty
      - medically qualified individuals are performing acts within the terms of their duty of care, when the act or omission occurs.
    - Breach of duty causing death
    - Gross negligence to justify a criminal conviction
    - It is for a jury to decide

Cost of Litigation

- Not just monetary cost
- Defensive practice
- Changing practice
- Recruitment

Change in CS 1962-2000



Cost of Litigation

- 10 years ago 5% of UK medical graduates went into Obstetrics and Gynaecology
- Over last few years only 0.5% have
- Few UK graduate men
- Mostly Women only (80%)

- More and more reliance on overseas doctors

Human error

"We all make errors irrespective of how much training and experience we possess or how motivated we are to do it right".

(in *reducing error and influencing behaviour - HSG48*)

Litigation

‘We must stop blaming people and start looking at our systems. We must look at how we do things that cause errors and keep us from discovering them…..before they cause further injury’

Lucian Leape
Error in Medicine
JAMA 1994 : 272 1851-1857

How do we stop the Escalation of claims?

- Negligence
  - Risk assessment, risk reduction
- Damage
  - Be honest, be aware
- Causation
  - Be honest, be open
- Quantum
  - Find alternatives

Keeping the mother and baby safe