NURSING LAW & ETHICS

Volume 1, Number 10
December 1980

The Role of the Legal System in the Cesarean Childbirth Controversy

by Judy Miller

The threefold increase in the cesarean birth rate in the United States during the last ten years has caused much concern among the general public and some medical professionals. Nurses particularly have shared this concern as the scope of nursing practice has expanded and nurses increasingly see themselves as patient advocates. Obviously, not all cesarean births are unwarranted. The procedure may be indicated if there is maternal or fetal risk during labor, if attempted induction of labor fails, and/or if an emergency mandates immediate delivery which is not possible or suitable vaginally.

A recent review of over 1,000 U.S. and foreign research articles cites three general reasons for the increasing cesarean birth rate: use of the operation for breech presentations and for repeat sections; the need for early intervention due to fetal distress as determined by the increasing use of fetal monitoring; and physicians' fear of malpractice suits. The first two reasons are matters of medical controversy. This article will examine the third reason, the fear of lawsuit, in an attempt to provide nurses with information about the law. The question is: should doctors ever perform c-sections because they fear being sued for malpractice?

Liability and Negligence

Reportedly, physicians fear being sued if injuries to an infant result from a difficult vaginal birth. In a 1976 article discussing replies to questionnaires about cesarean births sent to 50 representative medical school departmental chairpersons, professors and selected obstetricians throughout the U.S., almost all replies mentioned fear of malpractice suits as a reason for performing cesarean childbirth. Although "in 1938 . . . no one would have ever thought that the malpractice threat would be an indication for c-section,"[1] physicians today may be reaching a different conclusion. As a means of practicing defensive medicine, physicians may be choosing cesarean birth over vaginal delivery.

In general, liability for negligence regarding cesarean birth is premised on either misdiagnosis or incorrect or inadequate treatment. With regard to diagnosis, the issue of liability for negligence involves whether the physician uses the same degree of skill and care customarily used by the average reasonable physician with the same level of training and experience.[2] Mere misdiagnosis or an error in judgment alone is not sufficient to warrant the imposition of liability, as long as the physician meets the standard of care of the average reasonable practitioner.[3] If the physician performs the accepted tests, including those in recent use which a reasonable physician would consider appropriate, considers relevant symptoms, and makes a careful evaluation of all the information in light of the patient's past history and present condition, he is not negligent for merely choosing what turns out to be an incorrect diagnosis. Thus, if a number of different diagnoses, including one which does not necessitate cesarean childbirth, would provide a reasonable explanation of a patient's condition, misdiagnosis which leads to the conclusion a c-section is not required will not result in liability. The physician is not negligent for misdiagnosis unless it can be clearly demonstrated that the chosen course is not generally recognized as correct by the medical profession.

As with diagnosis, liability for negligent treatment is based on whether the physician uses that degree of skill and care in treating the patient which would be used by the average reasonable practitioner with the same level of education and training.[4] Thus, an obstetrician or gynecologist is not liable for damages that result from a mere error of judgment in treating the patient if he exercises the skill and learning generally used by physicians specializing in obstetrics and gynecology. The physician generally is not an insurer of a suc-

(Continued on page 2)

Judy Miller is a third year law student at Boston College Law School.

Contents