

The Agony and the Ecstasy of Medical Litigation

Editorial

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Every OBGYN specialist is fully aware of the practical relevance of the study of ethics in OBGYN, as indeed, in every other medical discipline. Few may be aware that the development of codes of ethics followed major breaches of ethical standards, which shocked many and inevitably led to organised guidance. Classical examples include the Nuremberg code of 1947 and the Helsinki Declaration of 1964. The rest was history. This evolution of a moral regulatory science, which was unavoidable, overdue and entirely laudatory never ceases to impress me at the sheer blindness of medicine to reap potential enormous multi-disciplinary advantages from the specialty of medicolegal studies (MLS). But I rush! For the crux of the problem is a general specific attitude to the problem of litigation.

OBGYN is no stranger to litigation, including its always unfortunate culmen in Court challenge. And the result is that in the great majority of cases, obstetricians tend to be highly allergic to the word litigation and its connotations, not excluding the resultant prohibitive indemnity insurance premia. The resultant mindset is understandably one of great conscious and sub-conscious revulsion at anything medico-legal with a resultant avoidance of the very thought, lest one jinxes oneself. Until the unfortunate day when that accursed legal letter drops in the home mailbox. Then it's all systems go, burning the midnight oil surfing the net and delving into each and every web-site which might offer some guidance or consolation.. In all truth, we as medical practitioners often forget the essential concept of litigation is a fair one for a patient injured by malpractice has every right to compensation. But abuse of the system and man being man, has rendered the situation as it is.

It may come as a surprise that the concept of litigation, expanded into the specialty of MLS, is a potential goldmine of opportunities for the individual practitioner/specialist, for the unit/hospital, for the community itself and last but not least to the world of medical academia. Be it under or post-graduate education or be it continuing medical education all may experience paradigm shifts through the medium of MLS.

Medico-legal studies constitute a specialty of their own, which may be considered as a spin-off from medical law. OBGYN specialists ought to be particularly interested in the subject as many cases from their specialty have led to important principles in the world of jurisprudential litigation. One of the latest was the landmark 2015 UK High Court ruling emanating from Nadyne Montgomery vs Lanarkshire Health Board which led to a whirlwind change in the law with regard to disclosure.

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It is correct to state that all these benefits centre around learning from the mistakes of others, or what I call the burnt finger phenomenon. Well, students of history are perennially thought that their specialty teaches how to avoid the past mistakes of others. The idea is not far removed from the discipline of ethics evolving from the realisation of past gross atrocities. MLS can be as vast and expansive as your discernment makes it. It can specifically exemplify why the principles of anatomy, Physiology, internal medicine and surgery.... need to be well understood and applied. It will impinge on any OBGYN specialist at any level the potentially explosive disaster of poor disclosure and patient communication.

The subject knows no standstill for as medicine delves into such byroads as robotic surgery and new aspects of assisted reproduction, to mention but two, the accompanying legal moral ramifications will never cease. At times, the law itself cannot keep up with Medicine ever expanding its clinical frontiers. However, the practitioner who is guided into the subject will discover a new insight into his daily work. As new awareness complements established guidelines, the resultant confidence will combat the monster of defensive medicine. Just as knowledge is power, so is medico-legal discernment the way to optimal patient management and maximal legal protection.

One must stress that the clinical teaching of MLS is a fait accompli in the more avant-garde departments, even if still to be accorded its wider deserving place in clinical and academic medicine. OBGYN in all its aspects stands much to gain and accomplish. However, all must be preceded by two conditions. An open mind to discern and reflect and a willingness to effect positive change. One may also add the need for determination on the part of teachers such as myself to try and pass the word. I do not regret accepting the post of Visiting Professor in Medico-Legal Studies at the School of Pharmacy in the University of Rome, Tor Vergata. In fact, I sincerely commend this university for its pioneering vision. The truly wise always seek to become wiser still.

My teaching of MLS continually enhances both appreciation of exploiting litigation to engender better practice with resultant benefit to patient and practitioner. It certainly helps me in my OBGYN practice. However, were I to choose between the two, there is no doubt that my fascination with MLS will eclipse my enthusiasm (which has never waned) for my clinical work. Maybe 'ecstasy' is too strong a word but fulfilment is certainly not.

My door is always open to guide other academic entities to the advantages of this fascinating specialty. Knock and the door shall be opened.