

5. Liability-Associated Distress Among Maternity Care Providers: Sources and Solutions

Fact Sheet for Stakeholders from *Maternity Care and Liability Report* *

Problem: The vulnerability to legal claims and the cost and volatility of liability premiums are troubling for many obstetrician-gynecologists. Among dozens of medical specialties, obstetrician-gynecologists rank near the bottom in recent studies of professional satisfaction; preliminary investigations suggest that liability-related discontent may play a role.

Report findings: The professional discourse about maternity care and liability of some outspoken leaders suggests great distress, e.g.: “condition critical” and “obstetric litigation is asphyxiating our maternity services” and “although health care has never been safer for the woman and her fetus, it has never been more dangerous to the physician.” Available research suggests that general obstetrician-gynecologists are more dissatisfied, overall and with respect to liability concerns, than perinatologists/neonatologists, family practice physicians, midwives, and physicians in gynecology-only practices.

The *Maternity Care and Liability* report identifies many liability-related aspects of professional practice that may be confusing, uncertain, ambiguous, misunderstood, and/or anxiety arousing to health professionals. These stressors, which may disproportionately impact maternity care clinicians, include:

- discrepancies between legal clinician standards and practice consistent with best evidence
- ambiguity about the respective responsibilities of clinicians and childbearing women in clinical decision making
- confusion about the safety of practices that are supported by best evidence but discouraged by terms of liability insurance policies
- perception that the cost of liability insurance premiums is onerous for maternity care providers
- beliefs about the likelihood of experiencing a claim, payout, or trial
- beliefs about the likelihood of being responsible for injuring a woman or newborn
- beliefs about the frequency of non-meritorious claims and payouts for them
- uncertainty about whether a claim will be filed on behalf of a child years after providing maternal-newborn care
- tension between traditional denial of harm and evolving standards of disclosure
- uncertainty about the integrity of expert witnesses and whether juries and judges are qualified to make determinations about clinical questions
- concern about the tort system as a source of assistance to parents facing long-term expenses of caring for injured newborns when injuries were not due to medical error.

Takeaways: A clear understanding of current evidence about these matters is a starting point for easing professional distress and addressing conditions that give rise to these stressful situations. The considerable evidence about effects of caps on non-economic damages in maternity care (see fact sheet 6) and rational thinking suggest that this most-advocated reform is unlikely to be effective in addressing any of the above-named stressors. However, the report identifies numerous interventions that do show potential for alleviating many of these common stressors, with potential as well for improving care for women and newborns and value for payers. Interventions to alleviate the underlying sources of professional distress warrant the attention of health professionals and policy makers.

Research is needed to understand whether liability-related distress adversely impacts professional satisfaction, professional behavior, and maternity care quality.

* **Learn more:** Sakala C, Yang YT, Corry MP. *Maternity Care and Liability: Pressing Problems, Substantive Solutions*. New York: Childbirth Connection, January 2013. Available at <http://transform.childbirthconnection.org/reports/liability/>. See also open access “Maternity Care and Liability” articles in *Women’s Health Issues* 2013;23(1) at <http://www.whijournal.com/issues>.

