Professionally responsible advocacy for professional liability law

FIGO Committee for the Ethical Aspects of Human Reproduction and Women’s Health*  

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The FIGO Committee for the Ethical Aspects of Human Reproduction and Women’s Health considers the ethical aspects of issues that impact the discipline of obstetrics, gynecology, and women’s health. The following document represents the result of that carefully researched and considered discussion. This material is intended to provide material for consideration and debate about these ethical aspects of our discipline for member organizations and their constituent membership.

INTRODUCTION

Professional liability with incurred expenses for premiums, attorney fees, payouts, and other costs has become of increasing concern for obstetrician-gynecologists around the world. Perhaps of even greater concern are public vilification of physicians and criminalization of negligence. These changes are not only a source of personal stress, but also a contributing factor in obstetrician-gynecologists leaving practice. The present report provides an ethical framework to guide professionally responsible professional liability law.

ETHICAL FRAMEWORK

The ethical framework is based on the rights of patients and the responsibilities of obstetrician-gynecologists. Patients have the right to clinical management that meets a professional standard of care. Obstetrician-gynecologists have the professional responsibility to provide such care. (See 2016 FIGO report on professionalism1). Expert witnesses have the professional responsibility to demonstrate that their opinions meet an accepted professional standard of care.

Healthcare organizations and the state should support physicians in creating and sustaining clinically meaningful systems of accountability. The societal right to accountability is limited. In particular, there is no societal right to accountability based on extraneous matters such as excessive documentation for purposes of defensive medicine. Obstetrician-gynecologists should advocate for policies that require healthcare organizations and the state to create and sustain clinically meaningful accountability for patient care.

The right to provision of patient care that meets an acceptable professional standard also means that professional liability law should require, and be limited to, evaluation of patient care against such a standard. This approach to professional liability reinforces, and therefore does not conflict with, the professional commitment to such care. Public vilification of physicians and criminalization of negligence threaten this commitment, except in extreme cases, by incentivizing physicians to put their self-interest first, rather than the interests of patients.

CONCLUSION

FIGO members in each country should undertake an analysis of the extent to which professional liability law is based on providing patient care that meets an acceptable professional standard. FIGO members in each country should then advocate for changes in professional liability guided by the following considerations:

1. All obstetrician-gynecologists and healthcare organizations have professional responsibility for the provision of patient care that meets an accepted professional standard.
2. Negligence is defined as the failure to adhere to a professional standard of care resulting in injury to a patient or similarly affected party. An adverse outcome is not by itself evidence of negligence.
3. Even excellent patient care will sometimes result in non-negligent adverse outcomes.
4. Patients or other affected parties have the right to initiate civil actions against physicians or other responsible parties for alleged negligence.
5. Professional liability law should hold physicians and/or other responsible parties accountable for adherence to an accepted professional standard of patient care.

6. Professional liability law should require expert witnesses to demonstrate that their opinions meet an accepted professional standard of care and prohibit testimony that does not do so.

7. Judicial processes should be fair to all parties and efficient, to protect the rights and interests of all parties and to use social resources responsibly.

8. FIGO categorically opposes public vilification of physicians and criminalization for alleged negligence except in extreme circumstances, because they are counterproductive in that they do not promote patient safety and quality but threaten to undermine professionalism in patient care.

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REFERENCE