

A REVIEW OF THE MEDICO LEGAL CONCERNS IN DIAGNOSTIC ULTRASOUND IN NIGERIA

¹AGI C, ²AHIDJO A, ³BALA AB

ABSTRACT

Litigation in medical practice is increasing in our environment and specifically the likelihood of malpractice in medical ultrasonography is emphasized. An effort was therefore made to review the literature on the legal concerns in Diagnostic ultrasound using Medline and bibliographic searches for relevant English language studies.

Current trend showed an increase in medico-legal issues in general medical practice in Nigeria but none yet in medical ultrasonography. The areas of increased vulnerability in ultrasonography were identified as obstetric scanning. Sonologists/ Radiologists should therefore protect themselves from litigation by being properly trained, ensure good control of treatment of patients, and deal with complaints promptly.

Keywords: *Legal concerns, Medical malpractice, Ultrasound, Diagnostic, Misdiagnosis, Sonologist, Sonographer*

INTRODUCTION

Litigation in medical practice is increasing in our environment. Recent development and questions about the blood transfusion facilities/laws in the country is a revelation of things to come. The deeply traumatized iatrogenically infected HIV baby's parents are seeking five billion naira compensation from the Lagos University Teaching Hospital (LUTH) through the country's legal systems.¹

As in all disciplines of medicine, the field of diagnostic sonography faces its own legal concerns.^{2,3} The rapidly growing sophistication of technology may not always be available or affordable at all corners of our vast country. Lack of formal training for specified number of years and absence of a certifying qualifying examination to pronounce a candidate "Sonologist/ Sonographer" has compounded the problem in medico legal complexities. Lacks of proper training or legal knowledge are certainly not legal defenses.

The most common concern facing the ultrasound specialist is that of missed diagnosis. Other areas of potential legal liability are informed consent, wrongful birth, wrongful life, criminal and civil liability and error of judgments. With the widespread application of ultrasonography as a primary diagnostic modality by clinicians, the responsibility of arriving at a correct diagnosis is increasing.

All those working in this field must understand and be familiar with the law as it pertains to our specialty to best protect themselves from unnecessary legal involvement.

The increasing awareness of the Nigerian populace to their rights and the rising trend of legal tussles/litigations due to suspected malpractices make it necessary to look at the legal concerns in detail as it affects

diagnostic ultrasonography.

MEDICAL MALPRACTICE

The legal principles involved in medical malpractice, also known as medical negligence, are largely found in the section of jurisprudence known as the TORT law. By definition, a tort is a civil wrong where the defendant breaches a duty owed to the Plaintiff (the person suing).⁴

The three basic types of torts are

1. Intentional torts, such as assault, battery, and trespass.
2. The strict torts that do not require the intention to do harm or negligence for liability to fall.
3. The negligence torts, the category into which medical malpractice falls.

There are essentially four basic components in a negligence action viz;

1. Duty
2. Breach
3. Proximate causation
4. Damages

Success in litigation necessitates the complainant with burden of proving each of these four elements. The duty of care as required of the defendant (clinician / Sonologist / Sonographer) is established by the physician patient relationship. The damages so sort by the plaintiff may be measurable (concrete) or immeasurable (complaints such as pain and suffering are not quantifiable in strict physical terms) or both as demonstrated in the case below.

In the case of Dr Rem Okekearu Versus Danjuma Tanko,⁵ the respondent was the plaintiff in the trial high court in which he denied the appellant the sum of N100, 000.00 as general damages to battery resulting from the

Affiliation:

¹Department of Radiology, University Port Harcourt Teaching, Hospital Port Harcourt, Rivers State, Nigeria. ²Departments of Radiology and ³Administration (Legal Unit), University of Maiduguri Teaching Hospital, Maiduguri, Borno State, Nigeria.

Correspondence and reprint request to:

DR AGI C
Department of Radiology,
University of Port Harcourt Teaching Hospital
Port Harcourt, Rivers State, Nigeria
e-mail: achukuemeka@hotmail.com

amputation of his left middle finger by the appellant, a medical doctor, to whose clinic he was taken when he sustained injury to his finger. He claimed the wound in the finger was not deep and that the defendant without due care and skill negligently amputated that finger, an exercise that permanently disfigured and incapacitated him in handling objects. He further averred that the defendant refused to surrender the amputated part of the finger. The ruling upheld that an act does not amount to a battery unless it is done either intentionally or negligently. The amputation of the plaintiff's finger was done intentionally and without the consent of the plaintiff or his guardian. This means the defendant is guilty of battery; the Supreme Court reduced the amount to N50, 000.00 in favour of the respondent.

The most difficult burden of proof for the plaintiff is the deviation from the standard of care "Reasonable man standard". While there is still relatively little legal precedent for many of the legal issues facing diagnostic ultrasound in the country, there is a large body of law on medical negligence in general medicine and older specialties.

LEGAL ACTIONS INVOLVING DIAGNOSTIC ULTRASOUND

The major areas of legal actions are:

1. Missed Diagnosis
2. Invented Lesions
3. Misreported Lesions
4. Failure to use Ultrasonography
5. Procedure related Complications
6. Sonographer/Technician related complications
7. Delayed reports
8. Miscellaneous

While there is no reported court case of medico-legal issue arising from diagnostic ultrasonography in Nigeria, numerous legal battles are frequently reported in the North America and Europe.^{6,7,8}

Drs. R. Sanders and C. Holier first took interest in legal actions involving ultrasound.⁹ In 1983 there were 64 legal actions arising from diagnostic ultrasonography in the United States of America.¹⁰ Their surveys showed that most litigations involving the use of ultrasound is in the area of obstetrics and the largest category of legal actions within the area of obstetric ultrasound is the missed diagnosis. The most frequently cited ultrasound misses include

- a. Extra-uterine pregnancy
- b. Fetal Anomalies
- c. Multiple gestations
- d. Placenta previa
- e. Failure to perform a sonogram (the obstetrician is usually the defendant in this case).
- f. Wrongful pregnancy
- g. Wrongful birth.

At the significant part is the question about the qualifications/competence of the ultrasound specialists involved and the systemic failure to detect and reduce false positive/negative diagnosis. Missed Diagnosis are instances when a Sonologist fails to report an anomaly e.g.

anencephaly which then subsequently either is picked up by a second ultrasonography done by the same individual or by a peer or it goes unnoticed and leads to a complicated clinical outcome. Cases of misdiagnosis illustrate the debate of streamlining who is qualified to perform and interpret ultrasound examinations. How much training is necessary for a competent Sonologist/Sonographer?

In Nigeria today, ultrasound scans are done by Radiologist/Sonologists, Radiographers/Sonographers, and other Doctors/technologists some of whom have done a limited ultrasound training somewhere or none at all. The burden of standardization lays with the Medical and Dental council of Nigeria, and the relevant medical imaging societies e.g. West African Medical Ultrasound Society (WAMUS). If the physicians do not establish acceptable minimum standards, the courts will do it for us using expert witnesses. In addition, the degree of physician/Sonologist involvement in the performance and interpretation of the study will soon become a focused issue.

In North America/Europe, the Sonographer does scans but the reports are vetted by the Sonologists, in Nigeria however there are no such legal requirements. In addition, guidelines related to ultrasound equipments, documentation and content of the ultrasound scan in general and the relevant bodies specifically have not issued obstetric sonograms. It is the guidelines from these bodies that will provide a minimum standard for what should be documented and recorded in the scan reports issued to patients. The guidelines should assess the sensitivity and specificity of the instrumentation and report writing should be addressed. The law expects the instrumentation to meet the community standard if not state of the art, as the more sensitive/newer machines are prohibitively expensive.

It is the duty of the physician to give the diagnosis and so report writing should be standardized to answer the most salient clinical dilemmas/questions. Vague meaningless reporting must be avoided. There must be uniformity in the terminologies. A report must describe in its body a complete description of all abnormalities that is everything the eye can see but the conclusion should discuss only those findings that are important to arrive at the inference. The Sonologist should not let the "fear of being wrong rob him of the joy of being right".¹¹

PROTECTING YOURSELF FROM LITIGATION

Today's physician must be constantly attentive to signs of impending malpractice claim. Patients do not usually sue people who have helped them. Human nature makes most people less likely to sue people they like, physicians included. Moreover, the opposite is true.¹² even blatant malpractice is often not acted upon in situation where there is a good physician patient relationship.

Methods of reducing litigation are

- (a) Ensure there is an open communication process for problems and complaints. A chain of communication ensures complaints are relayed to the Administration & Radiologist. All Complaints should be duly recorded.
- (b) Ensure members of staff treat patients warmly, cordially, and knowing that a sick person and family

members/friends are already stressed up.

- (c) Informed consent discussion serves to strengthen the physician (Sonologist) patient relationship and should not be taken lightly. Patients/Patient relatives should be given information on the risks, benefits, and alternatives.
- (d) Sonologists and their staff must be attuned to signals of potential litigation professionally which often first manifests in the form of patient complaints to technical staff.
- (e) The bases of medical law must be understood and so too must the trends in litigation.

The unfortunate reality is that no matter how careful one is, the chance of being targeted with a malpractice claim, even of a frivolous nature, has increased sharply over the years.

WHAT TO DO IF YOU ARE SUED

It is important to direct your energies to defending your suit

rather than antagonizing the patient or plaintiff attorney. The first thing to do is to secure the all medical records pertaining to the care without mutilating/altering any of them. Then send copies to the plaintiff attorney as requested but keep the originals. Speak to your attorney regularly as you have to be intimately involved in your own defense. You should insist on receiving copies of all communications from your attorney as well as being well prepared for your deposition and trial testimony.¹³

CONCLUSION

Legal concerns / malpractice suits are on the increase in the clinical practice in our setting. This article looks at the gray areas and nonexistent laws/standards governing ultrasonography or the failure to implement them. To be forewarned is to be forewarned.

REFERENCES

1. The Nigerian Guardian Newspapers. September 2nd, 2006: Pp9
2. Bundy AL. Radiology and the Law. Rockville, Md; Aspen Publishing Co I 1988:
3. Gilchrist AG. Medicare and Medicaid program penalties: understanding the process: AIDS, Malpractice and Medicare/Medicaid fraud and Abuse. Sanibel Island. Fla. American Education Institute 1992: 304-310
4. Dias RWM, Tettenborn A . Negligence. In: Clerk & Lindsell's (eds). Torts In Common law library Number 3. Sixteenth Edition. Publisher London Sweet & Maxwell 1989: Pp; 10-01 10-77.
5. Dr Rem Okekearu Versus Danjuma Tanko CNJ1. 2002: 98.
6. Jame AE. Legal medicine with special reference to Diagnostic imaging. Baltimore, Urban & Schwarzenberg. 1980: 305
7. King JH. The law of Medical Malpractice. St Paul Minn West 1977: 306.
8. Lkeonard B. Malpractice issues in Radiology. American Journal of Radiology 2001: 176; 307-312.
9. Saunders RC, Holiler CW. Legal suits involving ultrasound. J Ultrasound Med 1983; 2: 26-32
10. Saunders RC. Legal issues symposium. American Institute of Ultrasound in Medicine, Dallas. 1985: 308.
11. Oak S. Eagle,s eye and Lions heart-Medico-legal issues in ultrasonography practice. Indian journal Radiological Imaging 2002; 12(1):105-108.
12. Harrison RW. Why patients sue. An Attorneys perspective 1989-1990. Medical malpractice/Risk management and AIDS Update. Sanibel Island Fla American Educational institute 1990: 309.
13. Saunders RC. Update in legal complications. J Ultrasound Med. 1984: 103; 310-315.