"A Modest Proposal:" Universal Cesarean Section to Reduce Professional Liability Costs

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SYNOPSIS

Delivering all babies by cesarean section could *hypothetically* reduce professional liability costs by 73%.

ABSTRACT

OBJECTIVE: To model the effect of universal cesarean delivery on professional liability costs.

STUDY DESIGN: We examined all obstetric professional liability claims covered by a single insurer between January 1, 1990 and December 31, 2000. We reviewed each case to determine if an alternate route of delivery might reasonably have prevented the lawsuit. Costs were calculated by adding the cost of processing the claim, the legal defense, the settlement payments and/or the actuarially derived adjustments. Using a 20% cesarean rate as our baseline, we modeled the effect on liability costs of cesarean delivery in all patients.

RESULTS: There were 205,241 births during the study period, and 91 lawsuits (incidence 4.4 per 10,000) were initiated with projected claims-costs totaling $53,731,903 ($590,460 per case). Among those 68 cases in which route of delivery may have affected outcome, we estimated $39,070,661 might have been saved if 63 cases had delivered by planned cesarean and $804,486 in claims-costs might have been saved if 5 patients had delivered vaginally rather than by cesarean. Finally, we identified 23 cases with costs of $10,638,797 in which the route of delivery would not have affected the outcome. With this model of universal cesarean section, the projected number of lawsuits decreases from 91 to 48 (a 53% reduction) and the cost to insurers drops to $14,661,242 ($305,442 per case); a potential savings of $39,070,661 (72.7%).

CONCLUSIONS: In the current legal environment, a policy of 100% cesarean sections could ***hypothetically*** reduce professional liability costs by 73%. We do not propose such a policy because it would subject a majority of patients to medically unindicated surgery.

KEYWORDS:

Lawsuit; malpractice; liability; cesarean section.

BACKGROUND: In 1729, the satirist Jonathan Swift put forth, "A modest proposal for preventing the children of poor people in Ireland from being a burden to their parents or country, and for making them beneficial to the public."[1] In essence, his "Modest Proposal" was to breed children as food. No burdens. More food. Problem solved.

Many, including the American College of Obstetricians and Gynecologists, argue that problems with medical liability have reached crisis proportions. Jury awards seem by many measures to be rising and malpractice rates for obstetricians have reached as high as $249,196/year.[2] Frequently, plaintiffs' arguments in obstetric malpractice claims focus on "failure to perform a cesarean section." They suggest that early cesarean delivery would have prevented brachial plexus injury, cerebral palsy, uterine rupture in women undergoing trial of labor after vaginal delivery, or other similar injuries.

One potential answer to the repetitive charge of "failure to perform a cesarean section" is to imagine a policy of universal cesarean delivery. In this regard, we welcome the insight of our legal colleagues who have seen the obvious long before us. The policy they propose, and we here study, would save millions of dollars (in liability costs) if applied on a national level. Who among us would not choose what is best for the child even as it impacts the mother's health and adds billions to the cost of providing healthcare? Not to mention the elimination of tiresome decision-making on the part of the obstetrician. Mere details. In this study we reviewed 10 years of obstetric liability claims and calculated the costs and savings potentially associated with a policy of universal cesarean delivery.

FINANCIAL ARGUMENT: The study was approved by our Institutional Review Board. We examined all obstetric professional liability claims covered by the Controlled Risk Insurance Company (CRICO) between January 1, 1990 and December 31, 2000. CRICO provides liability coverage for physicians and institutions within the Harvard Medical School system.

Three authors (JAG, KEE, AWB) reviewed all the cases to determine if an alternate route of delivery might reasonably have prevented the liability claim. Such cases included claims made for shoulder dystocia, failure to diagnose fetal distress and perineal complications. For example, cases involving a ruptured uterus during a trial of labor in a woman with a previous cesarean section were considered preventable by earlier cesarean delivery. Conversely, costs associated with claims associated with cesarean delivery (e.g. retained instrument, bowel injury) were considered to be preventable by vaginal delivery. Cases in which determinations could not clearly be made were considered unaffected. An example of such cases would be claims surrounding circumcisions (which is covered within the obstetrical malpractice policy) or failure to diagnose antenatal complications.

Costs were calculated by adding the cost of processing the claim, the legal defense, the settlement payments and/or the actuarially derived adjustments (for unsettled cases, the actuarially derived adjustment is the sum set aside in anticipation of a settlement or payment given past experience with similar claims).

Using a 20% cesarean rate as our composite baseline for all the institutions over the 10-year period, we modeled the effect on liability costs of cesarean delivery in all patients. In our model we assumed all patients would have cesarean delivery either scheduled at 38-39 weeks gestation or in labor if they presented sooner.

There were 205,241 births during the study period, and 91 lawsuits (incidence 4.4 per 10,000) were initiated with projected claims-costs totaling $53,731,903 ($590,460 per case). Among those cases in which route of delivery may have affected outcome (n=68), we estimated $39,070,661 would have been saved if 63 cases had delivered by planned cesarean. In addition, $804,486 in claims-costs might have been saved if 5 patients had delivered vaginally rather than by cesarean Lastly, we identified 23 cases with costs of $10,638,797 in which the route of delivery would not have affected the outcome. For a model of universal cesarean delivery we calculated that there would be 48 cases rather than 91 cases (23 unaffected cases + 25 cases due to cesarean sections), a 53% reduction. We further calculated that insurers' costs would be $14,661,242 ($305,442 per case) or a potential savings of $39,070,661 over the 10-year period (72.7%).

OUR MODEST PROPOSAL: Swift would surely have seen with the clarity that many plaintiffs' attorneys seem to possess the clear answer. Every pregnant woman should have a cesarean delivery. At least this is what the finances of obstetric malpractice might argue.

Medical professional liability cost is a crucial issue that threatens to dramatically alter the delivery of obstetrical care in the United States. One could argue that while the neonatal risk

associated with vaginal delivery is low, that associated with elective cesarean delivery is lower still. What parent would not recognize at least some appeal in this argument? Yet, while many parents could be persuaded to do "whatever is best for the baby," a mother's own health cannot be ignored. And, as general public health care policy, of course, allocation of limited resource requires the application of different governing principles. A policy of universal cesarean sections would almost certainly increase obstetrical health care costs and would subject a majority of patients to surgery that is, at best unnecessary, and at worst harmful to the mother. This risk would only be compounded in women who have subsequent pregnancies and multiple repeat cesarean deliveries.

In our population the rate of obstetrical liability actions was low – 0.04% of live births. This makes identifying (and preventing) specific variables associated with obstetrical liability actions difficult. As an example, preventing a single permanent Erb's palsy could require between 85 and 373 unnecessary cesarean sections even at the most extreme birth weight of >5, 000 grams.[3] Preventing a uterine rupture in patients with a single prior low-transverse uterine incision could require abdominal deliveries in 9976 women.[4] It is also important to note that relative to all medical malpractice claims, the cost per case was high - $590,460. If we were to extrapolate our findings to all births in the United States during the same time period, our study suggests estimated liability costs of $11.5 billion and potential cost-savings of $8.4 billion (based on 43,925,035 births[5] and assuming pattern of liability costs similar to ours across all 50 states). Further, if we believe that today most patients who receive negligent care do not sue[6] and we

acknowledge that plaintiffs' attorneys are continuously improving their methods of identifying and attracting clients, then the potential for future costs and cost-savings becomes even more marked.

Our data does not suggest that cesarean sections can prevent poor outcomes or improve the quality of obstetrical care, but it does argue that a 100% cesarean section rate may dramatically reduce liability-associated costs. We created this model to illustrate the incongruous relationship between what many perceive to be the best obstetrical outcome (a vaginal delivery) and medical liability. Our model, as any model of clinical practice, has flaws: the cases were categorized subjectively, the baseline cesarean section was an estimate as were some of the insurer's costs, and we do not calculate increased future costs of repeat cesarean sections. However, even with the lowest cesarean section rates and the lowest cost estimates, the potential savings to the system would still be tremendous.

Swift's "Modest Proposal" for rectifying the economic woes of the Irish by eating the children of the poor, while unspeakably horrific, did provide a twistedly logical solution to a pressing problem of the time. Yet, Swift's goal was not see Irish children eaten but rather to cast light on an important social ill and encourage thinking people to seek solutions that encompass compassion as well as logic. In a similar vein, we see the problem of medical professional liability rapidly cannibalizing the ethical and scientific body of obstetrical practice. We are not advocates of a policy of universal cesarean sections and in this paper provide no evidence that cesarean sections offer better obstetrical care. We believe our model's conclusion that in the current legal environment, a policy of 100% cesarean sections could *hypothetically* reduce

professional liability costs by 73%. Nonetheless, we conclude that this is not the answer for women anywhere, and our society needs to work harder to fix this problem with a solution that is ethical and medically appropriate, as well as logical.

REFERENCES

[1] Swift J. A Modest Proposal. 1792.

[2] Stats-ACM03-Current Torts.doc. in www.acog.org.

[3] Ecker JL, Greenberg JA, Norwitz ER, Nadel AS, Repke JT. Birth weight as a predictor of brachial plexus injury. Obstet Gynecol. 1997 May;89(5 Pt1):643-7.

[4] Robert RG, Bell HS, Wall EM, Moy JG, Hess GH, Bower HP. Trial of labor or repeat cesarean section. The woman's choice. Arch Fam Med. 1997 Mar-Apr; 6(2):120-5.

[5] National Center for Health Statistics, U.S. Department of Health and Humans Services.

[6] Studdert DM, Thomas EJ, Burstin HR, Zbar BI, Orav EJ, Brennan TA. Negligent care and malpractice claiming behavior in Utah and Colorado. Med Care. 2000 Mar; 38(3):250-60.