

De aansprakelijkheid en
tuchtrechtelijke
verantwoordelijkheid van de
vroedvrouw in
België, Nederland en
Frankrijk: verwaarloosbaar
of stijgend in belang?



GENTS
INSTITUUT VOOR
GEZONDHEIDSRECHT

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INTRODUCTION

- ▶ I. Problem statement
- ▶ II. Legal aspects of maternity care
- ▶ III. Procedural guarantees
- ▶ IV. Risks of medical liability
 - Method
 - Results
- ▶ V. Recommendations for practice



I. Problem statement

- ▶ Patient in Belgium, the Netherlands and France: right to quality (obstetric) care
- ▶ Damage cases in obstetric care
 - Civil, criminal and disciplinary law suits
- ▶ What are the risks?
 - Recommendations to avoid damage cases and medical liability



II. Legal aspects of maternity care

- ▶ EU Directive 2005/36/EG: minimal competences of the midwife
‘guardian of the normal obstetric care’:
screen ↔ refer
- ▶ midwife = partner in normal obstetrics (in practice?) and subordinate of the obstetrician in pathology



III. Procedural guarantees

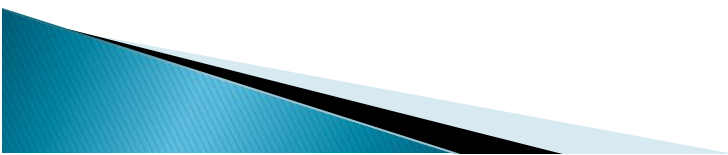
- ▶ **Civil liability**
 - Negligence, damage, causality
 - Full compensation of damage
 - or 'loss of a chance' → % damage

- ▶ **Criminal liability**
 - Penal infraction, damage, causality
 - Prison sentence (with suspension), fine and occupational ban (not in Belgium)



III. Procedural guarantees

- ▶ Disciplinary responsibility (not Belgium)
 - Breach of disciplinary code
- ▶ Sanctions
 - Warning
 - Reprimand
 - Fine (not in France)
 - Suspension
 - Dismissal



IV. Risks of medical liability

Method

- ▶ 190 cases: Belgium, the Netherlands, France
- ▶ Midwife and/or obstetrician
- ▶ Facts: 1968–2011 (pre–peri– and postnatal)



IV. Risks of medical liability

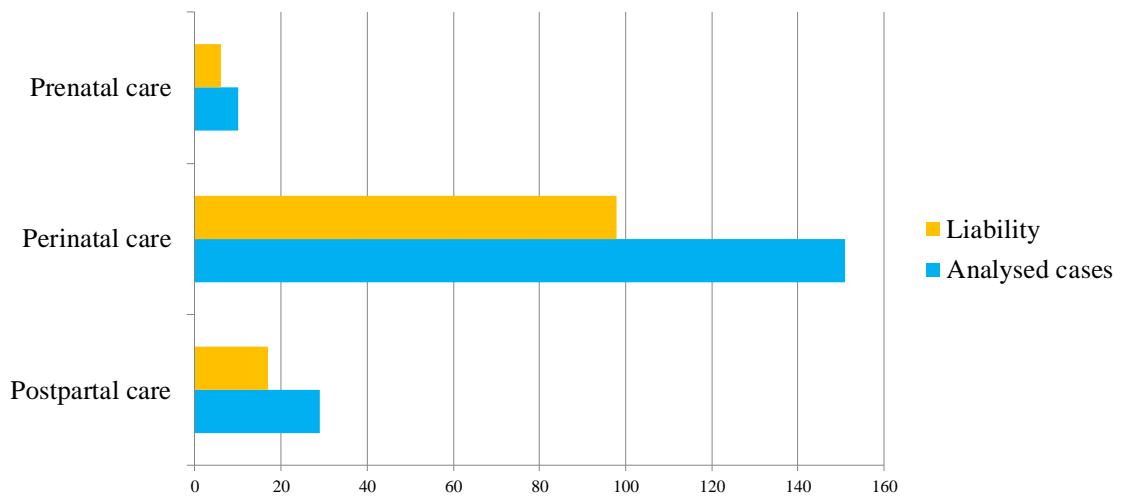
Results

- ▶ 64% (121/190) liability
- ▶ The Netherlands 51% (16/31)
- ▶ Belgium: 66% (35/53)
- ▶ France: 66% (70/106)



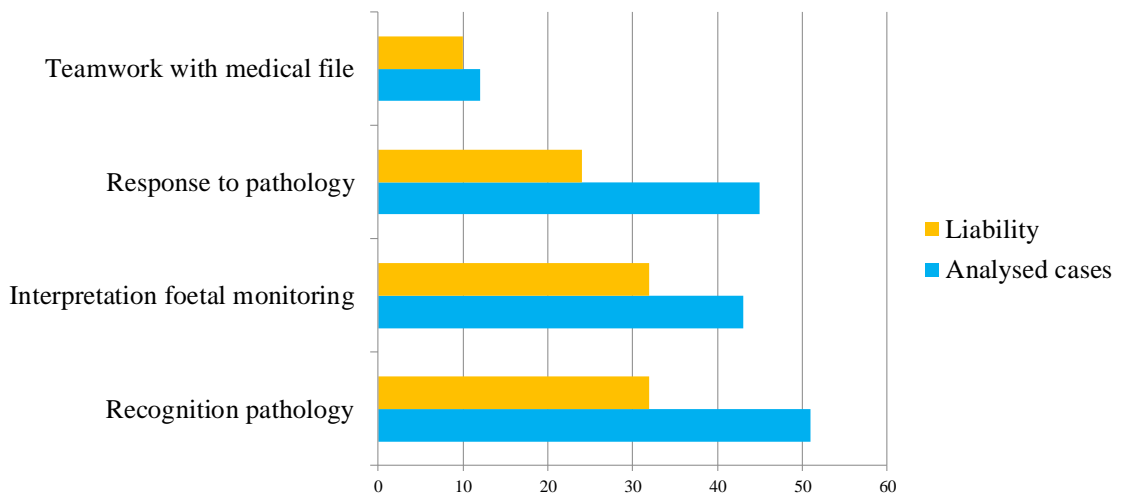
Risks

▶ 64% liability (121 / 190)



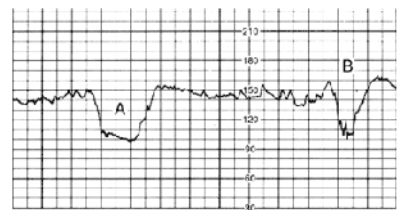
Risks in perinatal care

▶ 65% liability (98/151)

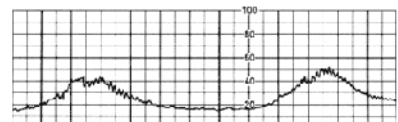


1. Fetal monitoring

- ▶ 74% liability (32/43)
- ▶ Misinterpretation: mostly joint responsibility
- ▶ Underestimating the severity
- ▶ Poor intra- and interobserver agreement among obstetric experts?!



Fetal Heart Rate



Uterine Contractions



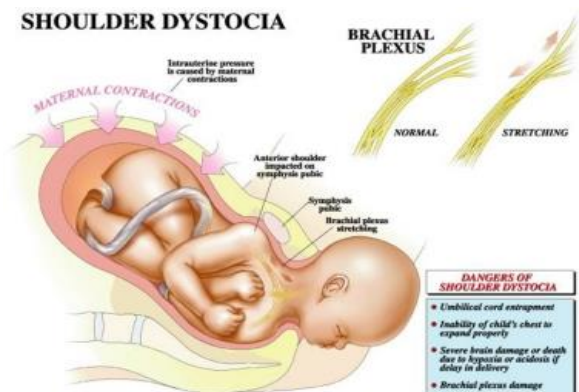
2. Recognition pathology

- ▶ 63% liability for not detecting symptoms on time (32/51)
- ▶ A. Uterine rupture (uterine scar)
 - Court of appeal Brussels 04/11/2004 (1991)
- ▶ B. Placental abruption (typical)



3. Response to pathology

- ▶ 53% liability (24/45)
- ▶ A. Shoulder dystocia: complication?
 - Performance maneuvers
 - Absence of risk factors: macrosomia, gest.diabetes, maternal obesity
 - Lack of consensus?!



3. Response to pathology

- ▶ B. Choice for instrumental delivery
 - incomplete cervical dilation, too little fetal descent, feto-pelvic disproportion
- ▶ C. Use of instrument
 - Positioning
 - Duration
 - Tensile force
 - ‘Failed instrumental delivery’?
- ▶ D. Fundal pressure (midwife)!!!!



4. Teamwork with medical file

- ▶ 83% liability (10/12)
- ▶ (Lack of) communication= adverse events?
- ▶ Shared mental model: ISBAR?
- ▶ Difficulties:
 - Test results, instructions especially in pathologic labour, updating medical record
 - Being on call, accessibility



V. Recommendations for practice

“CREATE LIFE”

- ▶ **C**ardiotocography necessitates ‘**LIFE**long learning’
- ▶ **RE**cognize pathology
- ▶ **A**ct: right intervention
- ▶ **Te**amwork with medical record!



Conclusion

- ▶ Value of a child ↑
 - ▶ Financial cost of health care ↑
- Civil, criminal and disciplinary law suits ↑?

Teamwork in health care and in a law suit is gaining importance

