

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



GENTS  
INSTITUUT VOOR  
GEZONDHEIDSRECHT

Marlies Eggermont  
Gent 2017  
Marlies Eggermont

# 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



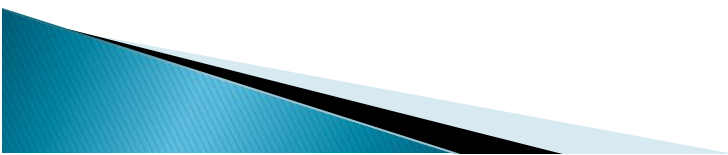
### III. Procedural guarantees

- ▶ **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

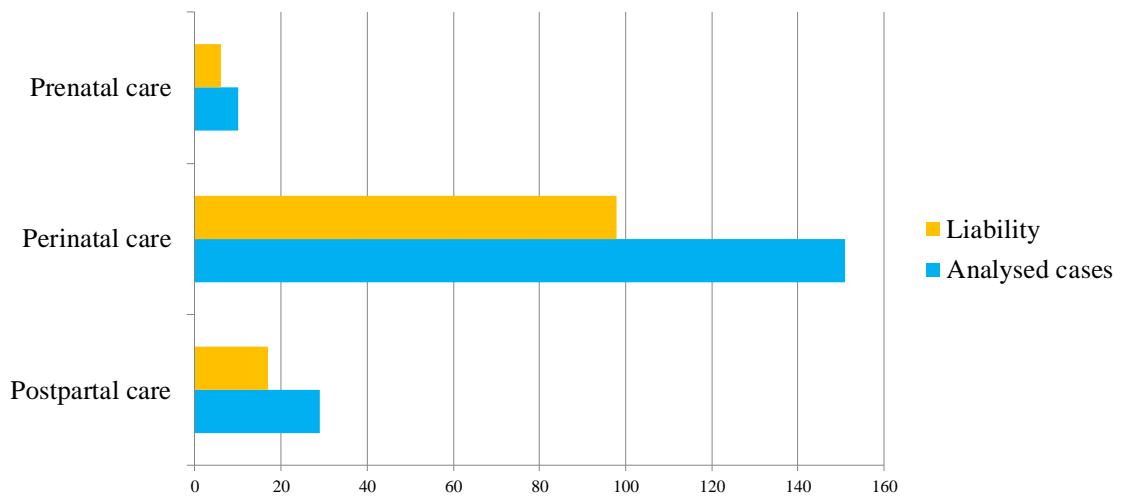
- ▶ 64% (121/190) liability
- ▶ The Netherlands 51% (16/31)
- ▶ Belgium:66% (35/53)
- ▶ France: 66% (70/106)





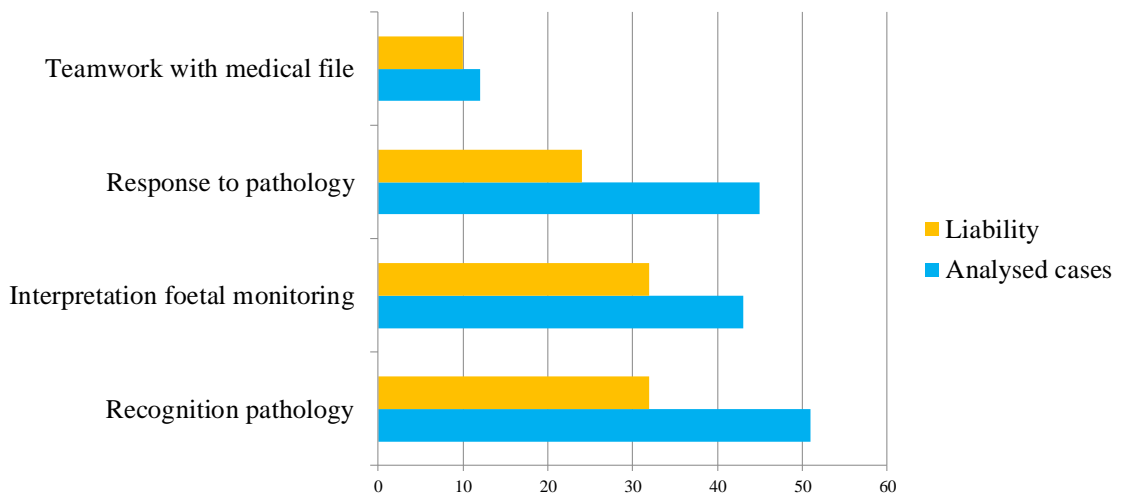
# Risks

▶ 64% liability (121 / 190)



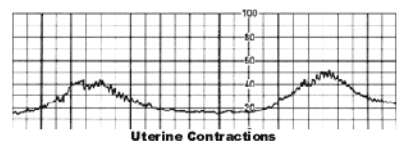
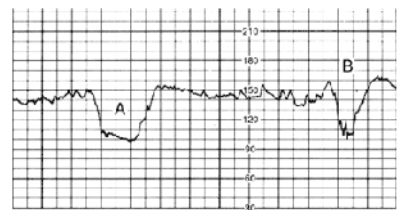
# Risks in perinatal care

▶ 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?!



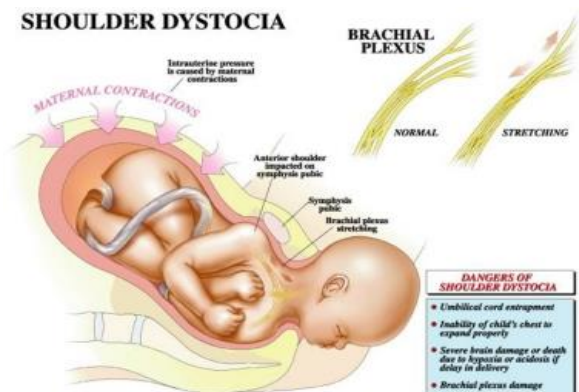
## 2. Recognition pathology

- ▶ 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?!



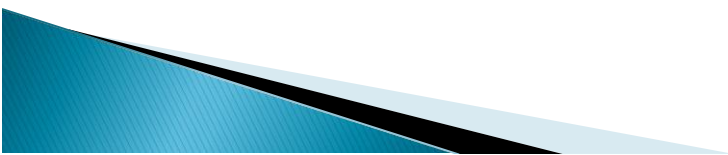
### 3. Response to pathology

- ▶ 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**

