What Matters Most: a legal-ethical analysis of reasonable enquiries in obstetrics

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Mercy Health

Care first

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Acknowledgement of Country

Overview

- A patient case
- Question, aims and methodology

Introduction

- An outline of birth trauma
- Legal and professional obligations
- Ethical obligations and autonomy

Background

- The problem
- Solutions
- Limitations
- Conclusion

Carina’s story

A patient case

“The major trigger was not being listened to or having my concerns respected... Because I didn't have my baby in the room with me,

it felt like I didn't matter."

(Birth Trauma Australia, 2023)

Research question + Aims

?

Research question, aims and methodology

Question: Should obstetricians have a legal obligation to make reasonable enquiries about what is significant to patients as part of their duty to inform?

Aim: To reduce the prevalence of birth trauma in Australia by improving doctor-patient communication

Methodology

A multidisciplinary approach across medicine, law and ethics:

?

Research question, aims and methodology

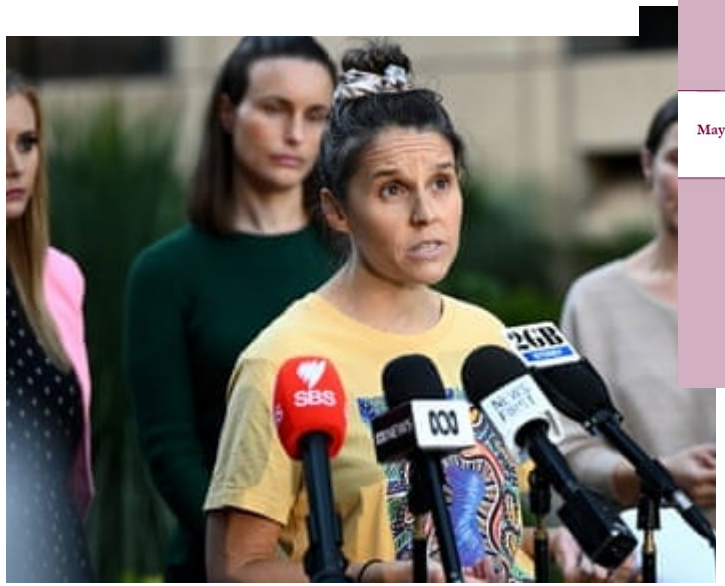
1. **Medical literature review of birth trauma**
    i. Pubmed, Embase, Scopus, Cochrane, and Medline
    ii. Search terms: “birth trauma”, “birth injury”, “obstetric violence”, “obstetric rape” and “mental harm”
    iii. Inclusion: sources from AU, NZ and UK.
    iv. Exclusion: non-English, older than 50 years.
    v. Total 121 sources
2. **Doctrinal analysis of case law and secondary sources**
    i. Lexis+, AustLii, Westlaw AU, and Jade
    ii. Search terms: “duty to inform”, “duty to enquire” and “information provision”.
    iii. Inclusion: relevance to medical negligence and duty to inform.
    iv. Exclusion: jurisdictions beyond AU and UK, treatment cases, and causation cases.
    v. Total 39 sources
3. **Ethical analysis focused on autonomy**
    i. Using *‘Principles of Biomedical Ethics’* by Beauchamp and Childress (2019) and other select texts.

Birth trauma represents a significant issue with doctor-patient communication

Birth trauma: physical injury or psychological harm that occurs during childbirth (Hurst, 2024)

An overview of birth trauma

BirthTrauma AUSTRALIA



“Birth trauma is ‘in the eye of the beholder” (Hurst, 2024)

Birth trauma represents a significant issue with doctor-patient communication

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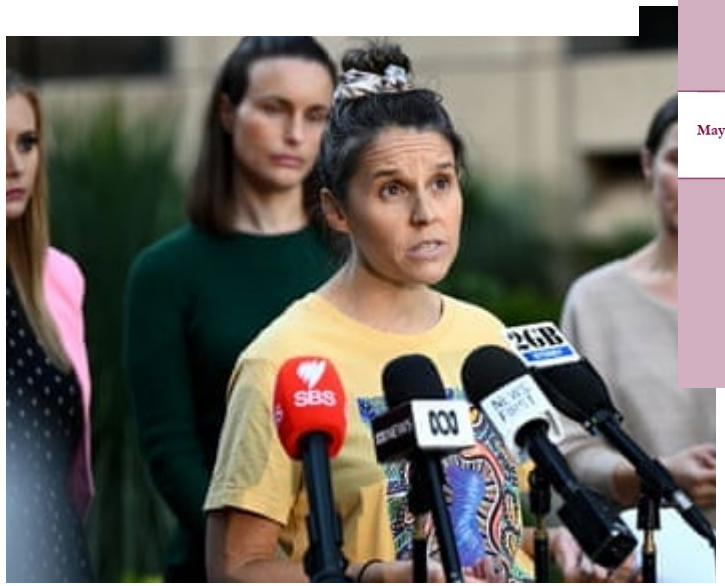

It is important for doctors to **actively seek to understand** what information would be **significant** to a particular patients' **decision making**.

"Birth trauma is 'in the eye of the beholder" (Hurst, 2024)

Current legal obligations are not enough to support patient autonomy in maternity care

Legal and professional obligations

Legal obligations

Material risks are:

Risks the **reasonable person** would consider significant

Risks the **particular patient** would consider significant

(Rogers v Whitaker, 1992, [16])

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Factors considered by courts as constituting a material risk (Addison, 2003):

- Likelihood and gravity of the risk
- Necessity of intervention
- Patients desire for information

Reaffirmed by cases such as:

- *Chappel v Hart* (1998)
- *B v Marinovich* (1999)
- *Johnson v Biggs* (2000)
- *Rosenberg v Percival* (2001)

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Despite requiring doctors to inform of material risks, the law in Australia does not outline how a doctor should identify what may be material, and thus of significance, to patients.

Montgomery v Lanarkshire (2015) – An example of maternity information provision

Legal and professional obligations

The Facts

- A short woman with a large baby – higher risk of shoulder dystocia (baby becoming stuck in the birth canal).
- Not informed of the risk of shoulder dystocia and option of C-section.
- A shoulder dystocia occurred – baby deprived of oxygen for 12 minutes.
- Baby left with severe disability.

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The Courts Ruling

- The court held that Mrs Montgomery should have been advised of the risk of shoulder dystocia and the option of C-section.

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Takeaways

- Rejects medical paternalism and supports autonomy in childbirth.
- Does not extend the subjective limb of what constitutes material risk.
- Has not been referred to by Australian courts.

Legal and professional obligations

Current professional obligations are not enacted reliably enough to support patient autonomy in maternity care

Legal and professional obligations

Medical Board Ahpra

Good medical practice: a code of conduct for doctors in Australia

October 2020

(The Medical Board of Australia, 2020)

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Section 4.3.1: Listening to patients, **asking for** and **respecting** their **views** about their health, and responding to their **concerns** and **preferences.**

Patients cannot access compensation for harms due to inadequate enquiries

Legal and professional obligations

Legal obligations

Patients cannot access compensation **unless** there is a breach of the standard for a legally recognised obligation that caused harm to the patient.

Professional obligations

Patients cannot access compensation when they are harmed by a doctors failure to meet their professional obligations

(Health Practitioner Regulation National Law Act 2009).

There is an ethical argument for doctors to make reasonable enquiries

Ethical obligations and autonomy

Ethical principles often underpin codes of conduct

(Beauchamp & Childress, 2019)

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To provide appropriate information, doctors must understand what matters to a patient

(Beauchamp & Childress, 2019)

The problem

Ethical obligations	Legal obligations	Professional obligations
We should be making reasonable enquiries to respect patient autonomy	No legal obligation to make reasonable enquiries	Obligation exists but reasonable enquiries not being reliably made

The problem

Ethical obligations

We should be making reasonable enquiries to respect patient autonomy

Legal obligations

No legal obligation to make reasonable enquiries

Professional obligations

Obligation exists but reasonable enquiries not being reliably made

Current legal and professional obligations **do not provide** an avenue to **consistently ensure meaningful choice** for patients that would **prevent birth trauma**

There is a need for clearer guidelines outlining reasonable enquiries in maternity care

Creating a new legal obligation would make the law more autonomy enhancing.

Solutions

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Formal discussion about patient goals and expectations embedded into standard antenatal care.

Enquiring about goals of care is a meaningful way to understand what is significant to patients

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Goals of care: what a patient wants to achieve during an episode of care, within the context of their clinical situation (Australian Commission on Safety and Quality in Health Care, 2019).

Reasonable enquiries = Standard antenatal hx + Documented 'goals of care'

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- 20-week visit
- 36-week visit

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- Booking visit
- 20-week visit
- 36-week visit

- Formal documentation
- Improved communication
- Risk identification
- Tailored antenatal education

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Solutions

"The major trigger was not being listened to or having my concerns respected... Because I didn't have my baby in the room with me,

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Limitations

- Increased burden?
- Increased legal liability?
- Does not address gap in compensation
- Obstetricians are not the only clinicians involved
- Quality control is difficult
- More research is needed

Conclusion

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Documenting women's goals of care offers a practical method to improve doctor-patient communication through reasonable enquiries

References

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Thank you!

Questions?