

NEWSFLASH!**'Cerebral palsy is not preventable'!**

Lawyers representing plaintiffs should be aware of a recent escalation in the war of words over cerebral palsy cases.

Most would know that in the wake of the 'indemnity crisis' the medical profession took aim at cerebral palsy cases in the misguided belief that these cases were most responsible for doctors' escalating insurance premiums. It was argued that since *most* cases of cerebral palsy are not caused by birth asphyxia it followed that *most* legal claims alleging cerebral palsy caused by birth asphyxia were baseless. The illogicality of the argument was breathtaking. But the upshot of the uproar was the publication in 1999 of an international consensus statement designed to restrict the circumstances in which doctors would concede that birth asphyxia could be a cause of a child's cerebral palsy.¹

Angst about medical negligence litigation and the future of obstetrics in this country was in the news throughout the 1990s. Alarmist articles in medical journals² and an Australian version of the consensus statement were published even before the international one in 1999.³

After the consensus statement made it more difficult to link birth asphyxia to cerebral palsy, a further anti-plaintiff volley came by singling out cases of alleged negligent delay in performing emergency caesarean sections.

It was a long-accepted rule – endorsed by obstetricians internationally – that the 'decision-to-delivery time' for emergency caesareans should not exceed 30 minutes. But in 2001, an Australian survey of a small number of South Australian hospitals showed median delivery times between 42 minutes and 69 minutes, depending on the type of hospital.⁴ It was argued, on the basis of this survey, that the 30-minute rule was unreasonable and, in practical terms, unachievable.⁵

The latest attack on medical negligence claims for cerebral palsy has just been published. It is a 'call to arms' by obstetricians against plaintiff lawyers and also against all experts who assist plaintiff lawyers. It is entitled 'Only An Expert Witness Can Prevent Cerebral Palsy'.⁶

The authors make some extraordinary claims including:

- *Cerebral palsy is not preventable.*
- The opinions of plaintiff experts who say otherwise are based on scientifically unproven premises.
- Experts who advocate caesarean delivery within 15-30 minutes ignore international and Australian audits of decision-to-delivery times.
- Estimates of the costs of cerebral palsy litigation indicate that up to 70% of the costs are spent on the legal process.

The main purpose of this latest article is to enlist the support of the Royal Australian College of Obstetricians and Gynaecologists to attack doctors who support plaintiffs. The authors refer disdainfully to 'a few selected plaintiff radiologists' who claim to be able to use neuroimaging to

determine the time of asphyxial injury. And they do not hide their contempt for 'paediatric neurologists [who] can be even more in the dark' when they give their expert opinions in favour of plaintiffs.

Every one of the inflammatory and anti-plaintiff articles referred to above is authored or co-authored by one person: Professor Alastair MacLennan from the University of Adelaide (see endnotes).

Professor MacLennan is obviously entitled to his opinions and any rational information he can provide to help understand the complex causal factors behind cerebral palsy should be welcomed. I wholeheartedly agree with some of what he says about medical witnesses. I agree with the opinion in his most recent piece that there is no place for 'rogue expert witnesses' in litigation. And I agree that opinions should be 'evidence-based' wherever convincing and credible evidence is available.

But Professor MacLennan's opinions and the questionable 'evidence' behind them leave me uneasy. Many doctors I know do not share his views either.

Professor MacLennan and his South Australian colleagues are often engaged by medical defence organisations to defend doctors in cerebral palsy cases. Support for their conclusions often comes from studies that they have designed themselves and from papers that they have authored.

So it is important that when lawyers handle cerebral palsy cases for plaintiffs they are very familiar with the literature that will be used against them, and its source. But far from being defensive, lawyers should welcome the opportunity to debate these views openly and expose them to critical scrutiny in a courtroom setting. ■

Notes: **1** MacLennan et al, 'A template for defining a causal relationship between acute events and cerebral palsy: International consensus statement' *Aust NZ J Obstet Gynaecol* 2000; 40: 13-21. **2** MacLennan AH, 'Who will deliver the next generation?' *Med J Aust* 1993; 159: 261-3. **3** The Australian & NZ Perinatal Societies (MacLennan AH, chair), 'The origins of cerebral palsy – a consensus statement' *Med J Aust* 1995; 162: 85-90. **4** MacLennan et al, 'How long does it take to deliver a baby by emergency caesarean section?' *Aust NZ J Obstet Gynaecol* 2001; 41: 7-11. **5** Contrary to the Australian findings, an English study (also from 2001) revealed that 478 of 721 (66.3%) women were delivered within 30 minutes and 637 (88.3%) within 40 minutes; 29 (4.0%) were undelivered at 50 minutes. If the woman was taken to theatre in 10 minutes, 409 of 500 (81.8%) were delivered in 30 minutes and 495 (97%) in 40 minutes. Tuffnell et al, 'Interval between decision and delivery by caesarean section – are current standards achievable?' *Brit Med J* 2001; vol 322(7298): 1330-3. **6** MacLennan et al, 'Only an Expert Witness Can Prevent Cerebral Palsy' *O&G*; vol 8, no 1, Autumn 2006: 28-30.

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