

The Oblito A Surgical Error: Retrospective Analysis, Diagnosis And Cause Of Legal Medical Liability. Systematic Review

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ABSTRACT

The oblito is an event of very low frequency but that can generate serious morbidity. It even causes death if it is not diagnosed and attended to with opportunity, in addition to increasing the costs of care, because the patient must be readmitted to the hospital and be surgically re-operated. For the present research, a compilation of scientific articles was made from databases such as Pubmed, LILACS, Scielo, Elsevier, Ebsco Host, and also for the search for this information, keywords such as textiloma; occupational risk; incidence; medical error; morbidity; diagnosis; surgical equipment, recklessness; negligence were used. The search was carried out in both English and Spanish and for the selection of the documents we took into account the type of impact that the journal has and the number of citations that you have the articles collected from the databases. For the case of the surgical oblito the review showed that there is a low incidence of oblitos, as well as report of the same, meaning this in a statistical way that indicates the oblito an adverse event not so frequent, however, also showed the review that it is not so frequent its report by the members of the surgical team especially by the surgeon and the instrumentalist (a) surgical (a) for fear of ethical-legal responsibilities.



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1. INTRODUCTION

Oblito is a very low frequency event but can generate severe morbidity. It even causes death if it is not diagnosed and attended to with opportunity, in addition to increasing care costs, because the patient must be readmitted to the hospital and surgically re-operated, at least once again [1]. The origin and development of individual medical liability and the joint medical responsibility of the surgical team against the oblito and the jurisprudential line frames the responsibility although some risk factors have been recognized and complementary detection systems have been developed, it continues to be a major problem from the health and medical legal point of view [2]. Medical care must be provided with quality and safety; in recent years it has been possible to expose medical errors, which are currently and assertively identified to analyze and

prevent them. To date, health systems are invariably adverse, with special emphasis on their analysis, which direct actions to reduce them and, if possible, avoid them as much as possible [3]. The main treatment is laparotomy or laparoscopy with a radiological or ultrasound base diagnosis this causes a great expense for the health system that is becoming more complex these human errors do not occur only by chance it has been shown that they follow certain patterns and that they occur under predictable circumstances [1].

2. Methodology

For this research, a compilation of scientific articles was made that were collected from databases such as Pubmed, LILACS, Scielo, Elsevier, Ebsco Host, etc. Keywords such as textiloma were used to search for this information; occupational risk; incidence; medical error; morbidity; diagnosis; surgical equipment, recklessness; negligence. Bearing in mind both in English and in Spanish obtaining as a final result 25 articles analyzed. Scientific articles, books, book chapters, and documents provided by official pages from the legal ethical point of view were also used as the primary source. The search strategy was established through keywords in English and Spanish, using as the main criterion for the selection of documents 1: the type of impact that the journal has, 2: the number of citations that you have the articles collected from the databases [4].

2.1 Oblito a foreign body: generalities and frequency

Foreign bodies that may remain involuntarily after surgery are a subject little analyzed in the medical literature, as they can lead to a trial for malpractice [5]. Within the different Latin American countries such as Mexico, Chile, Colombia, Bolivia, Argentina and Brazil the surgical oblito is known as "textiloma", "gossypiboma", "gasomas", "oblitomas". Factors those are associated with an increased risk of forgotten surgical material as they happen in emergency surgeries, changes in the type of surgery that was planned to be performed and in patients with high body mass indexes. Other factors associated with forgotten surgical material are the performance of very long surgical procedures, changes in the nursing staff during the intervention, the presence of several surgical teams and the final factor, human error [6]. The Canadian Institute of Safety defines an error as the failure of a planned action to be completed as intentional (i.e., execution error) or the use of an incorrect plan to achieve a goal (i.e., planning error). An error often results in an adverse event for the patient. Adverse events are injuries or damages that result from an error in the course of the patient's treatment rather than the patient's underlying condition; usually as an unintentional and unexpected fact. Medical Errors are therefore defined as avoidable adverse medical events [7].

Surgical gauze is made of cotton, an inert material that does not stimulate the formation of tissues, but produces adhesions and granulomas. The gauze and compresses forgotten in the body can cause two types of reactions: aseptic fibrosis with adhesion formation and, subsequently, a capsule that with poor management evolves into granuloma and exudative fibrosis that forms an abscess with bacterial colonization or without it. Statistically, "it is considered that an oblito will occur in a range as wide as one every 100 to one every 3000 operations" in Colombia unlike in Mexico "Although it is not frequent to forget a foreign body, 0.3% to 1% of 1,000 surgeries performed have been reported"[8].

Between 68 and 90% of the foreign bodies retained in the abdomen correspond to compresses and gauze, and the rest is associated with drainage systems and metal objects (scissors, needles, and tweezers). The patient in this study represents the first case published in the literature of a Yankahuer cannula bulb retained after surgery [9].

Foreign objects retained in the body can cause serious sequelae such as: surgical reoperation for removal (69-83%), intestinal perforation, fistulas and obstruction (10-22%). Some series indicate that mortality is zero

where the diagnosis is incidental and is based on radiological studies that are generally simple, since simple radiology can identify gauze and compresses marked with radiopac material (See photograph), in up to 90% of cases and the classic radiological pattern is that of "honeycomb" or "breadcrumbs", which corresponds to the compress infiltrated by secretions and gas; however, this image is not characteristic and can be confused with the stool image, but its topography outside the colic framework and its persistence in different radiological studies would rule out this possibility [9].

2.2 Medical liability as a variant of professional responsibility

Malpractice lawsuits have all but decreased. "The frequency of complaints is at historic lows. The current medical malpractice environment for physicians is probably the best in the last 40 years," according to a leading medical liability consultant. To some extent, this is due to better diagnosis and medical treatment, but to a greater extent it appears to be due to the high cost of undertaking and prosecuting medical malpractice litigation [7].

Medical liability is a variant of professional and general liability that concerns all people regardless of whether or not they exercise a profession, the difference is that through this exercise arises an objective element "the damage", which is directly related to medical action, whether by medical care, surgical intervention, a practice, etc., and that from the legal point of view, is framed within the so-called culpable crimes, where the intentionality of the action is not to cause harm, which if it happens must be due to recklessness, imperience, negligence and non-observance of the duties under his charge [2].

The Civil Chamber of the Supreme Court of Justice of Colombia that all members of a team were answered for any kind of damage caused by any other member of the team, through the figure of solidarity. This has brought a huge argument, because in addition, the case was that gauze had been left in the abdomen of a patient. Well, it seems to me that the ruling has the wrong considerations, because the first thing to take into account is that there is delimitation of functions, and that the anesthesiologist has nothing to do with the counting of gauze, and the surgeon does not have to do with many issues that are priority functions of anesthesiologists and so we could continue to cite examples. So I recommend, in order to manage this risk, which may have an echo, because it was also invoking positions of other countries with which the Court ruled, that the functions of each of the members of those who work as a team be very expressly defined" [10], [11].

2.3 Diagnosis of surgical oblito versus medical responsibility

In 2004, the Universal Protocol of the Joint Commission to Prevent Surgery in Wrong Places, Wrong Procedures and Wrong Persons (the Universal Protocol) was promulgated. The Universal Protocol of the Joint Commission consists of pre-procedure verification; marking of the place of the procedure; and a "dead time" or final verification, immediately before the procedure [9].

The most frequent way to start treatment for a possible surgical oblito is the use of simple and advanced diagnostic images." according to the literature in 90% of patients, the identification of a foreign body will be done by simple x-ray plates, leaving only 10% to other types of advanced imaging studies, such as ultrasound, CT and MRI. "However, the radiological and imaging findings of forgotten surgical material such as gauze are variable. The initial simple projections make it possible to identify such accidental retention by observing the radiopaic marker that is in the gauze [10].

Statistically it can be said that "With the use of imaging studies, the preoperative diagnosis ranges between 50 and 70%. The history of previous surgery is the fundamental data for your suspicion. The value of

ultrasonography and tomography is recognized, but there is no specific image for the diagnosis of textiloma. [12].

Performing Rx either routinely or in the face of dissenting counts is not foolproof either. Kaiser's study showed that in 3 cases out of 29 in which Rx was performed to detect gauze, false negatives were obtained. Needles and instruments smaller than 17 mm have high false negatives. Nothing replaces methodical examination of the wound or cavity. False positives have also been reported. Direct communication with the radiologist technician or doctor is also important, and it must be ensured that the rays capture all the anatomical areas where work was done. Radiology will not be effective if areas are lost where gauze or instruments can "hide". Questions are also raised about the cost/effectiveness of radiological screening in high-risk patients. According to Gawande, it would take 300 radioscopies to detect 1 retained foreign body. According to the same study, the cost of these studies should be valued against the cost of an eventual trial for professional responsibility [13].

2.4 Ethics and medical education towards human respect

Medical ethics deals with the moral principles that should guide members of the medical profession in their dealings with each other, with their patients, and with the Express. Patient safety and health quality has increased enormously, but errors and adverse outcomes still prevail in clinical practice [14]. In a similar study on medical errors (2002) in America, most respondents want medical errors to be reported immediately after detection regardless of the use of medical care. The study also emphasized medical teaching techniques of error disclosure, honesty and compassion and was endorsed as a priority for educators who teach error management. The doctor-patient relationship is a primary element in medical practice. For this relationship to be fully successful, it must be based on a responsible, loyal and authentic commitment, which imposes the strictest professional reserve [15].

In the field of the practice of medicine, Law 23 of 1981 regulates the norms of medical ethics where it qualifies the moral behavior of the health professional, so states the doctrine: "Ethics is the science that bases the moral behavior of the human being to adapt it to the good of the universe, society and the individual" Similarly the Colombian medical ethical court refers to ethical and moral behavior of the physician, the concepts of honesty, ethics and morality, without entering into philosophical definitions which we do not despise, is to observe and respect the natural law, the rights of others, to observe the law [13].

2.5 Legal framework and new paradigm

The most important thing about the new paradigm is the institutional approach to medical errors. The first major fundamental factor at the institutional level is that a professional culture is created to consider errors as existing, but which can be prevented in the future with a recognition, analysis and modification of clinical practices identified as responsible. The creation of a protected, blame-free environment that promotes the systematic reporting of serious adverse events will allow valuable information for preventive work. The use of anonymous incident reports in hospital services has made it possible to identify, analyze and create prevention policies. In addition, it allows quantifying the facts and setting goals over time. The health team must understand the importance of reporting without being penalized for it [16].

In the analysis of adverse events, multiple moments are usually observed in which the event could be avoided. Most mistakes have to do with institutional failures rather than personal^{mistakes}. Cultural change must be promoted, through the development of disciplined thinking, leading to systematic research and analysis of the causes of adverse events and organized work for their prevention. This implies acting on individuals, teams, tasks, places, rules and institutions, to reduce the incidence of these problems and reduce their risks or even

to make unpredictable errors more apparent so that they are warned with prophylactic sense [17].

To reduce medical errors, the use and availability of evidence-based medicine analyses, clinical guidelines, epidemiology should be promoted; maintain good professional competence through continuous training programs, teamwork, good management of the clinical record, stability of the health team and optimal supervision of the personnel in training [18].

2.6 Types of errors in current medicine

Medicine is a vast field of knowledge; and ignorance. Scientific advances over the past hundred years have exceeded all expectations, but only in some areas. Research and social development have expanded the scope of action in the form of new specialties and interactions with other branches of knowledge. Medical ignorance is evaluated if we put a doctor with his patient in the best of scenarios, which of the most developed specialties, we can ask ourselves: Can the doctor know in depth about 2,000 diseases cataloged internationally? Can you know the pathognomonic signs, the analytical and radiographic data, have they, etc. and establish your assessment to make the diagnosis? Although you approach the therapeutic strategy correctly, can you master the available arsenal? (More than a thousand different molecules with more than fifteen thousand different presentations). Obviously it needs great preparation, professional skills and competences, support instruments, safety and teamwork. However, how can we not understand the many professional gaps of any doctor? [19].

Faced with this state of affairs, those who usually work in the defense of doctors, wonder if they are incompetent in the preparation of the medical documentary, recklessness in adopting obsolete treatments or negligence to comply with the deberes of the profession? Impericia: Lack of knowledge in a certain art or profession, clearly we see that when an unusual therapeutic behavior is adopted, the professional incurs in this assumption. As an example, we can cite the case of a colleague who habitually used an aminoglycoside for the prophylaxis of intraoperative infections in gynecology, when in recent years the consensus indicates the use of cephalosporins [19].

Recklessness: Not taking precautions to avoid a risk or acting hastily. example: it was decided not to carry out a medical history of women who enter labor, only the partogram is made, however, no one has begun to think what would happen if a cause of malpractice arose from the care of that woman. What document would we offer to demonstrate the correct medical action, taking into account that the medical history (document par excellence) was not carried out. What do we mean when we talk about recklessness? We simply call this the absence of minimum and indispensable elements for medical work to be reflected in the medical record. This lack simply places the physician in a state of helplessness since data that are not found in the medical history cannot be incorporated when exercising the defense [19].

Negligence: It is the opposite of the sense of duty. It is our obligation as doctors to keep written record of our professional acts, medical history, office file, on-call books, etc. In this case there are plenty of examples: empty, incomplete medical records, lack of updating of treatments without evolutions, etc. What would be the consequences of acting negligently? Without fear of error we can say that in current medicine and more when it is judicialized there is no place for empirical or obsolete behaviors, all medical conduct must be reasonably based on updated procedure guidelines, whether these are produced by institutions, scientific societies or by the same service. Contrary to the norm is always subject to being claimed and even condemned [20].

Another fundamental concept that we covered was the non-observance of the professional norm, an oversight

in the act in which an omission occurs, a breach of duty that leads to damage. Since the doctor is responsible for his or her actions, he or she may have to assume legal liability of an administrative, civil or criminal nature. Malpractice is usually unintentional, with no intention of causing harm, although intentional crimes exceptionally occur [20].

2.7 Medical criminal responsibility in Colombia

As indicated in article 1 of Law 23 of 1981 (Code of Medical Ethics), the purpose of medicine is to take care of "the health of man and to promote the prevention of diseases, the improvement of the human species and the improvement of the patterns of life of the community, without distinction of nationality, nor of a social, racial, political and religious economic order [21].

The action must be typical, that is, it is not enough that it is contrary to a rule. Not every anti-legal action constitutes a crime. The action must be framed in a legal type, in a figure of crime. Anti-legality must be criminalized, that is, described in a conduct that leaves no room for doubt and in order not to cause defenselessness. It must be attributable to wilful or culpable liability. That is what is meant by guilty, in the broadest sense. Finally, it must be punishable, that is, the act or omission, the human act, must be punishable by a penalty, otherwise the crime does not exist. When we talk about criminal liability, in the medical field, we refer to the study of criminal offences that are related to the health professions. In this sense, reference can be made to the following: Homicide, Cooperation and inducement to suicide, Abortion, Injuries, Genetic manipulation, Illegal detentions, Omission of relief and refusal of assistance, Discovery and disclosure of secrets, Assumption of childbirth, Falsehoods, Intrusion, Release of nuclear energy or radioactive elements, medical recklessness [22].

Civil liability, unlike administrative liability, necessarily implies the existence of damage, whether of a patrimonial or moral nature, that is to say, this element constitutes a sine qua non requirement for its configuration. Civil liability is present to exonerate, partially or totally, the defendant who has caused damage, its influence will be determined to the extent that that fact has been the exclusive or partial cause of the damage. When we refer to the fact of the victim, we must study, therefore, the active behavior of the injured party in the realization of the phenomenon; simple intervention in both the plaintiff's and the defendant's conduct is not enough, causation requires that these have been an instrument of harm. The victim always intervenes in the production of the damage, but only in some cases that intervention is active; only in the latter case can we speak in fact of the victim [23].

Administrative responsibility. This type of responsibility arises when the doctor violates any of the precepts established in the General Health Law, its Regulations and other provisions that emanate from said law, regardless of whether or not damage is caused to the patient's health. By way of example, we can mention that, when carrying out their professional activity, health institutions and physicians must comply with each and every one of the obligations established in the Regulations of the General Health Law on the Provision of Medical Care Service, which for this purpose provides the form and conditions in which said service must be provided. The penalties for administrative responsibility are imposed by the health authorities, who, according to article 417 of the General Health Law, may consist of: 1) Reprimand with warning, 2) Fine, 3) Temporary or permanent closure, which may be partial or total, and 4) Arrest for up to thirty-six hours [23].

2.8 Medical liability for reporting a case

A judgment of June 23, 2010 addresses a case in which a patient underwent surgery in a procedure called right salpingoophorectomy. A little more than a year after this surgery, the patient was again hospitalized, with a diagnosis of pelvic abscess [24].

To remove the foreign body he had in the omentum, he underwent surgery and the doctor who operated on it reported as findings: "Compress inside the plaston, intestinal epliploic with pus and ileal sigmoid wall involvement." He then proceeded to dissect the omentum to free it from the foreign body and subsequently sutured the intestine, which he reported as a successful surgical procedure. In resolving the dispute, the Council of State warned that the situation described was framed among the cases of surgical oblitio, which have been considered by the doctrine and jurisprudence of the Corporation as a poor execution of medical or surgical care, which constitute a proven fault or failure, in application of the *res ipsa loquitur* principle. On the basis of this understanding, the Council of State decided to confirm the conviction of the hospital entity imposed by the Nariño Administrative Dispute Tribunal at first instance, recital [24].

In this regard, the Chamber finds that the defendant entities never detracted from the negligence preached by the actors, which took place in the victim's surgery by leaving within their humanity foreign bodies "gauze and needles", which gave rise to abdominal peritonitis, septic shock, acute renal failure and pulmonary thromboembolism [25].

In the same vein, in a statement of July 8, 2009, the Council of State stated: "Since it is proven that a gauze that forced a surgical intervention to remove it is proven, and it is also clear that this fact constitutes a failure, the Chamber will condemn the defendant entities to pay the respective compensation for this damage [25].

3. Conclusion

For the case of the surgical oblitio the review showed that there is a low incidence of oblitos, as well as report of the same, meaning this in a statistical way that indicates the oblitio an adverse event not so frequent, however, also showed the review that it is not so frequent statistically since it is not reported, by the fear of part of the professionals or simply by not generating the damage to another professional or colleague of the surgical area. This responsibility is analyzed from the fault of the professional either by his inexperience, his impericia or recklessness. It is important to know the risk factors and adopt a culture of prevention, through perioperative surveillance of the material and instruments used during the surgical act.

Medical errors are often caused by human errors that occur during the health care process as a result of the interaction between humans and the systems in which they are integrated. According to Reason, human error is the failure of a planned sequence of mental or physical actions to achieve the desired outcome when this failure cannot be attributed to chance. According to this definition, medical error is a cognitive phenomenon because it is an error in human action that is a cognitive activity. To prevent human error, the system in which humans work must adapt to their cognitive strengths and weaknesses and must be designed to enhance the effects of human error that does occur. To design such a system, it is critical to understand the underlying cognitive mechanisms of medical errors.

Some recommendations have been proposed for the prevention of oblitos and these were designed according to the participation of each of the members of the surgical team (instrumentalist, surgeon and circulating nurse of the operating room, etc.) and the characteristics of the operating rooms, among which stand out: carefully count all the material that is placed on the table of instruments for the operation (especially the textiles that are to be used), during the opening of the gauze and compress packages at the beginning of surgery and each time a new package is received; maintain a neat instrument table throughout the intervention to facilitate counts and prevent material losses; immediately inform the rest of the surgical team when leaving materials in the operative area, indicating where you leave the material and how many units you use (this will facilitate the attention and responsible participation of all those involved, will also facilitate its extraction and, if necessary, its search in case of missing at the end); notify the surgical team when it removes that material it

had left, saying what type it is and how many united-des it removes, to keep the count under control; wait for the instrumentalist to communicate the result and number of counts performed before proceeding to close the operative field.

The identification of an abdominal intramavitary fibrotic inflammatory process and the presence of secretion of inorganic material through a surgical incision are the most frequent situations with which the presence of Gossypiboma is associated. It is not uncommon for the diagnosis of Gossypiboma to be incidental and radiological studies to be very helpful in elucidating its origin. Its early recognition minimizes surgical risks and helps to avoid severe complications.

It is recognized that there is precariousness in methods of coercion that obliges the surgical implementer and the group within the surgical act to comply adequately with the protocols of each institution in health entities that have it. As well as, a type of public policy must be established in the different Latin American countries for the creation of these manuals or protocols that guarantee the safety of the surgical patient and their compliance. The analysis may involve a surgical oblito for this professional, so it is pertinent the need to train the professional of surgical instrumentation on the responsibility, not only of the surgical oblito but in functions such as adequate diligence of counting of intra-avitary materials or surgical materials, audit of the processes of counting of materials before, during and after the procedure, as well as performing the same processes, in all types of procedure, regardless of complexity. Since no one is exempt from making mistakes regardless of the experience they have since the oblito can occur in any invasive procedure, and can even cause serious medico-legal consequences.

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