

## Defending Obstetric Cases: Managing Medical and Legal Risks for the Best Outcomes

September 18, 2025



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### Speakers



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### Overview

- Introduction and National Verdict Trends
- CRICO/Candello Obstetric Claims Data 2020-2024
- What Makes OB Cases Different From Other Cases
- Why We Lose OB Cases
- How We Win OB Cases
- OB Claims Mitigation Strategies
- Conclusions/Questions

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### Learning Objectives

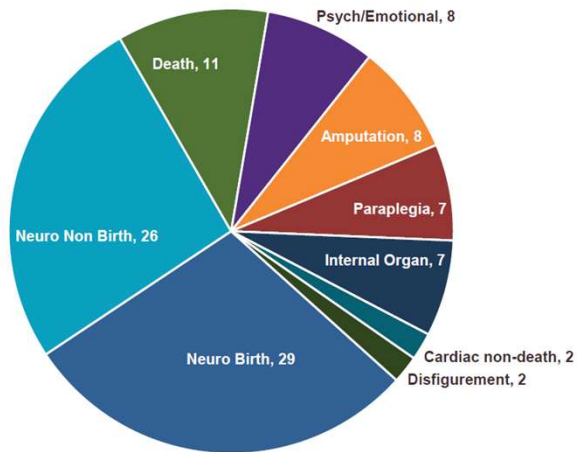
- Understand the impact of large jury verdicts future MPL claims and current trends in obstetrical cases.
- Identify the multiple factors that make obstetrical cases different from other MPL claims.
- Recognize the critical importance of expert witness testimony, medical record documentation, jury selection and other factors that affect the outcome of obstetrical cases.
- Evaluate areas where implicit bias can influence obstetrical care.

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## National Verdict Trends

### Top Ten Verdicts

By primary injury, cumulative (2015-2024) = 100 verdicts



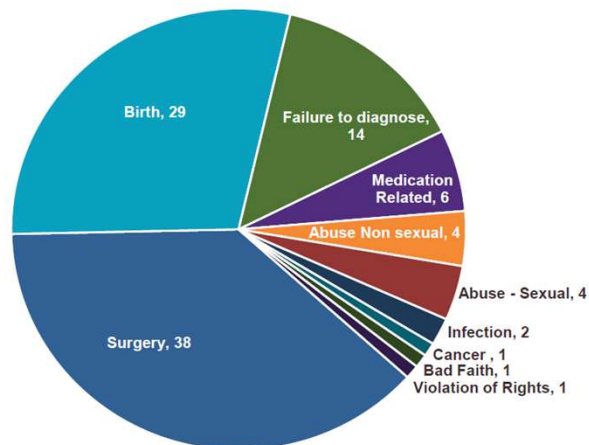
SOURCE: TransRe 2025

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## National Verdict Trends

### Top Ten Verdicts

By nature of claim, cumulative (2015-2024) = 100 verdicts



SOURCE: TransRe 2025

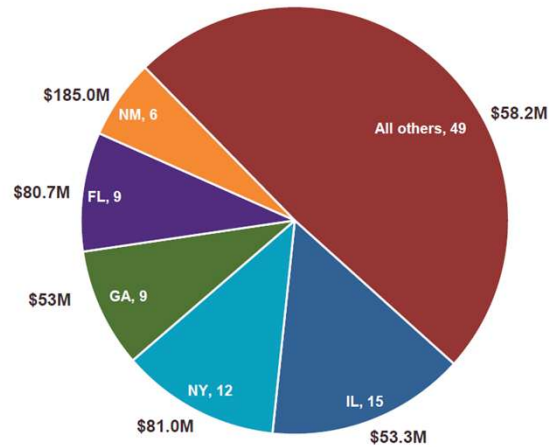
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## National Verdict Trends

### Top Ten Verdicts

By State, cumulative (2015-2024)

Overall Average Verdict: \$70.4M



SOURCE: TransRe 2025

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## National Trends: Obstetric Claims - Large Verdicts

### TransRe Large Verdict Data 2024 - 2025 (as of 6/30/25) – All Verdicts

- 2024 – 5 verdicts over \$100M (up from 4 in 2023)
- 2025 – 2 verdicts over \$50M
- 2025 – 15 verdicts over \$25M
- 2025 – 29 verdicts over \$10M

### TransRe Large Verdict Data 2025 (as of 6/30/25) – OB verdicts

- 11 OB-related verdicts above \$3M
  - \$3- \$10M = 4
  - \$10-\$25M = 5
  - \$25-\$50M = 2
- All 11 verdicts spread across five states



SOURCE: TransRe 2025

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## National Trends: Obstetric Claims – 2025 Large Verdicts

11 of the top 46 verdicts were OB-related



SOURCE: TransRe 2025

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## National Trends: Obstetric Claims - Large Verdicts

### Appellate Wins

- \$229M Johns Hopkins 2019 verdict (\$0 paid)
- \$111M Minnesota 2022 verdict (successful appeal, ultimate confidential settlement for a fraction of the verdict)
- 97M Iowa 2022 verdict (\$7M paid by hospital, other defendant had a successful appeal)

### Appellate Loss

- \$182M UPenn 2023 birth verdict
- July 2025 - Unanimously upheld on appeal
- State Supreme Court even if reduced still over \$100M

### Pending Appellate 2023

- \$261M Maya claim from Florida. Decision soon, but then to Supreme court




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## What is Candello?

- A national database of medical professional liability (MPL) claims
- A division of CRICO, the MPL insurer of the Harvard medical institutions
- Identify trends in medical error and patient harm



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## Candello National Landscape Cases Asserted 2020-2024

### All MPL Cases

34K Cases Asserted  
\$9B Total Incurred

### OB Related Treatment Cases

2k Cases Asserted  
\$1B Total Incurred

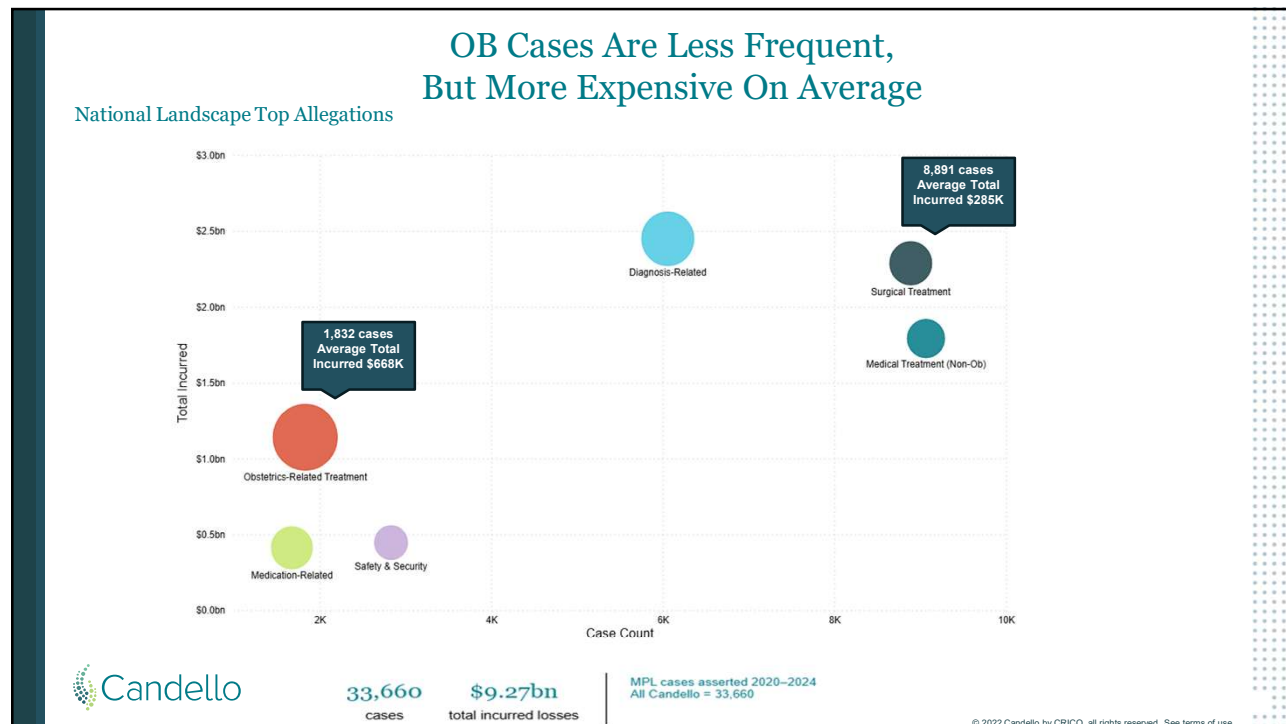


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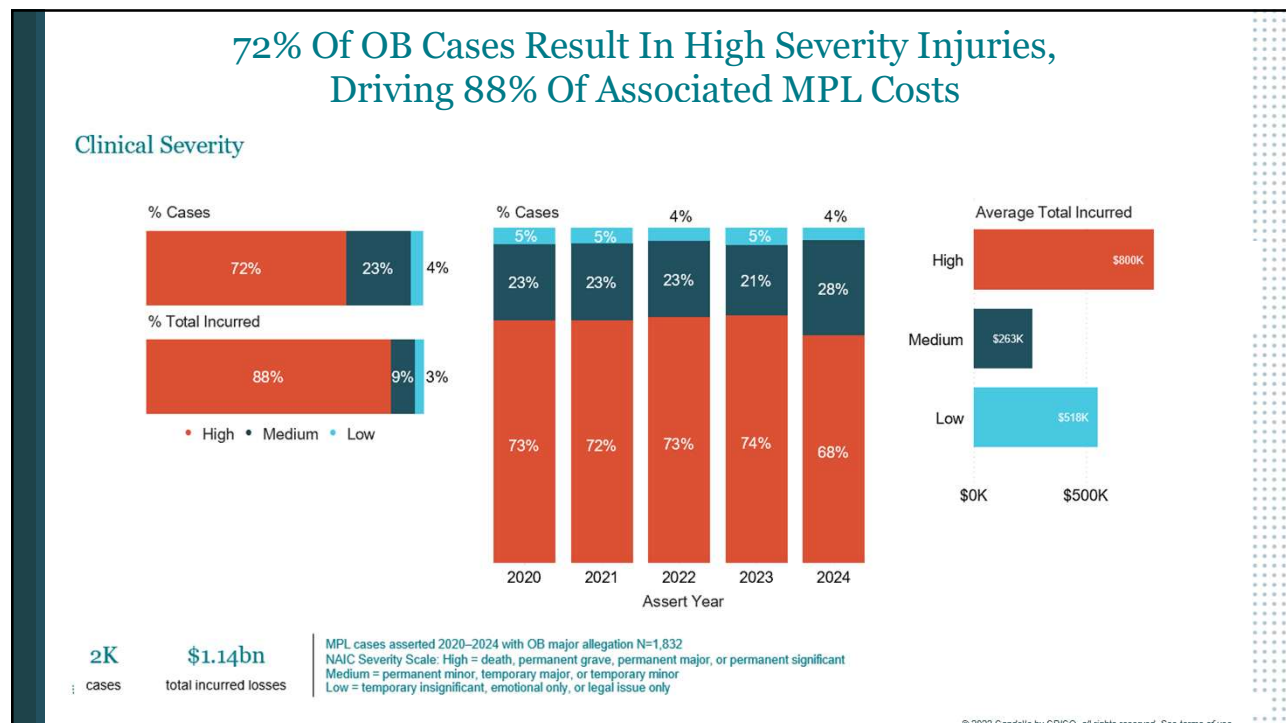
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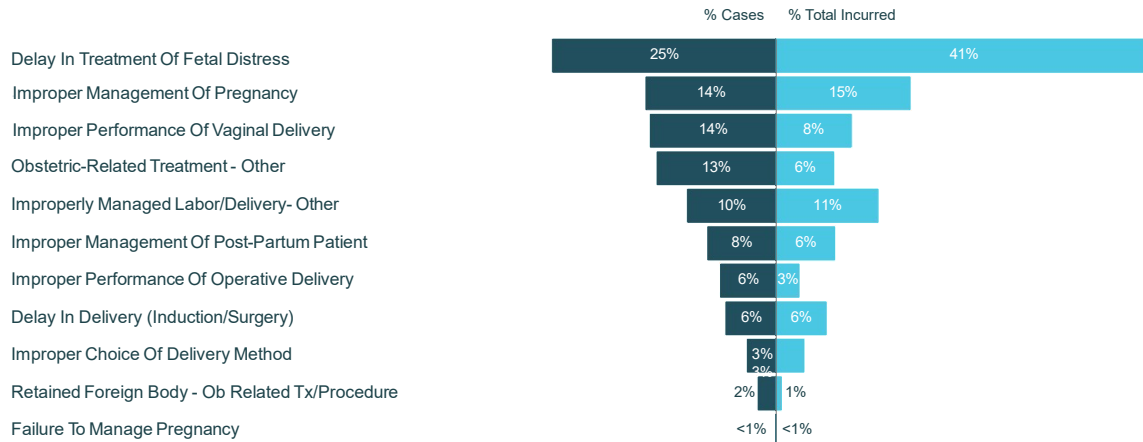


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## Delay In Treatment Of Fetal Distress Most Frequent And Costly Allegation

### Allegations



**2K**  
cases

**\$1.14bn**  
total incurred losses

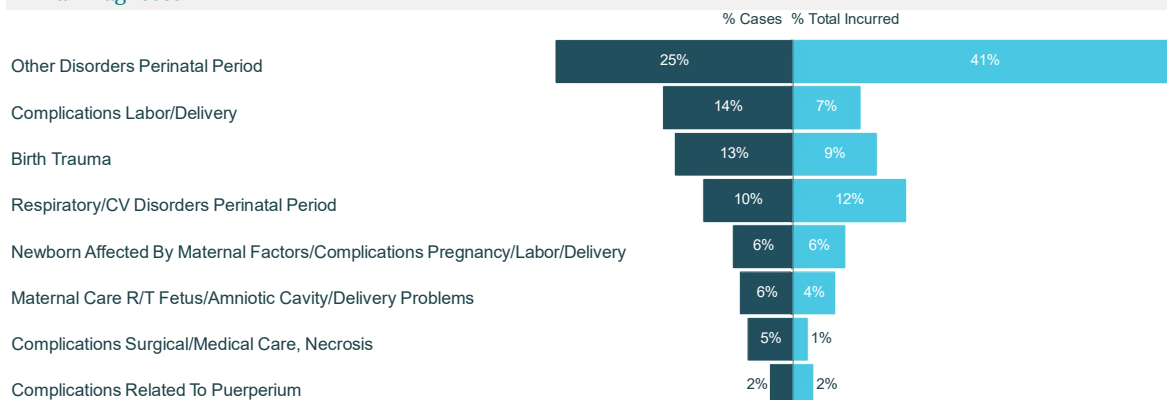
MPL cases asserted 2020–2024 with OB major allegation  
N= 1,832

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## Other Disorders During The Perinatal Period Most Frequent And Costly Final Diagnosis Most Common Of These Being Hypoxic Ischemic Encephalopathy

### Final Diagnoses



**1K**  
cases

**\$916.85M**  
total incurred losses

MPL deeply-coded cases asserted 2020–2024 with OB major allegation  
N= 1,203

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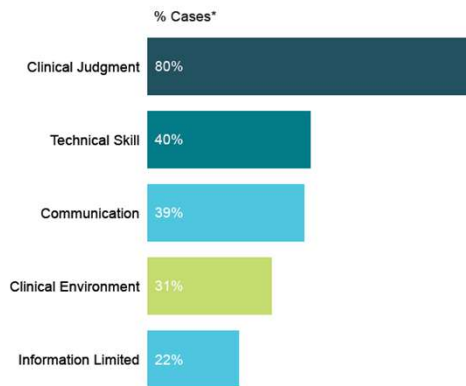
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## Majority Involve Clinical Judgment-related Challenges

### Contributing Factors

#### Top Contributing Factor Categories



#### Top Contributing Factor Details

Top Clinical Judgment Factors	% Cases
Selection/Management Therapy—labor And Delivery	65%
Failure To Appreciate And Reconcile Relevant Sign/Symptom/Test Result	44%
Pt Assess—misinterpretation Of Dx Studies (Xrays, Slides, Fms)	17%
Selection/Management Therapy—pregnancy	17%
Pt Monitoring—physiological Status (Other Than Med/Biol Response)	15%

Top Technical Skill Factors	% Cases
Technical Performance - Possible Technical Problem, Known Complication	58%
Technical Performance—poor Technique, Other	21%
Technical Performance-Improper Use Of Traction During A Procedure	12%
Improperly Utilized Equipment (Includes User Error)	6%
Technical Performance-Poor Technique, Resuscitation	6%

Top Communication Factors	% Cases
Communication Among Providers—regarding Patient's Condition.	43%
Communication Among Providers-Failure To Escalate Concerns	15%
Communication Between Patient/Family/Provider - Expectations	10%
Communication Among Providers—failure To Read Medical Record	8%
Poor Rapport (Includes Unsympathetic Response To Patient)	6%



1K  
cases

\$916.85M  
total incurred losses

MPL deeply-coded cases asserted 2020–2024 with OB major allegation  
N= 1,203  
\*a case may have more than one contributing factor

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## What Makes OB cases Different From Other MPL Cases?

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## What Makes These Cases Different?



### Number of Plaintiffs

Every case has at least 2 patients



### High Expectations

Every plaintiff expects a healthy and perfect outcome



### Sympathy

Child involved

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## What Makes These Cases Different



### High Costs

Life care plan numbers universally enormous for brain injury cases



### Political Awareness

Discussing fetus in utero

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## Why We Lose

- **Poor case selection =**
  - Bad venue x
  - Severe lifelong injuries x
  - Normal life expectancy x
  - Unsympathetic/uncontrollable defendant
- **Sympathy factor**
- **Unlikeable defendant**

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## Why We Lose

- **No physical evidence to support expert opinion**
  - Medical records documentation
  - Imaging Studies
  - Labs
- **Wrong defense counsel selection**
  - Doesn't know the medicine as well if not better than experts
  - Bullying in the courtroom

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## How We Win

### The Case

- Good attending oversight of resident (communication)
- Good contemporaneous documentation
- Likeable and well-prepared defendant
- Alternative theory of causation
- Pictures - imaging studies to support insult older than time of delivery

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## How We Win

### The Counsel

- Select the right defense counsel
  - Experienced in OB claims litigation
  - Emotional intelligence on how far they can push
  - Able to translate medical speak into layman terms
- Top notch experts (preferably better than plaintiff's experts)
- Prepare for the sympathy factor

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## How We Win

### The Courtroom

- Impartial judge
- Jury Selection
- Venue
- Observers in the courtroom
  - Jury reactions
  - Expert testimony on point
  - Daily transcripts to keep experts advised of prior testimony

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**AMA**  
AMERICAN  
MEDICAL  
ASSOCIATION

**More than 62% of OB/GYNs will be sued**  
at some point in their career

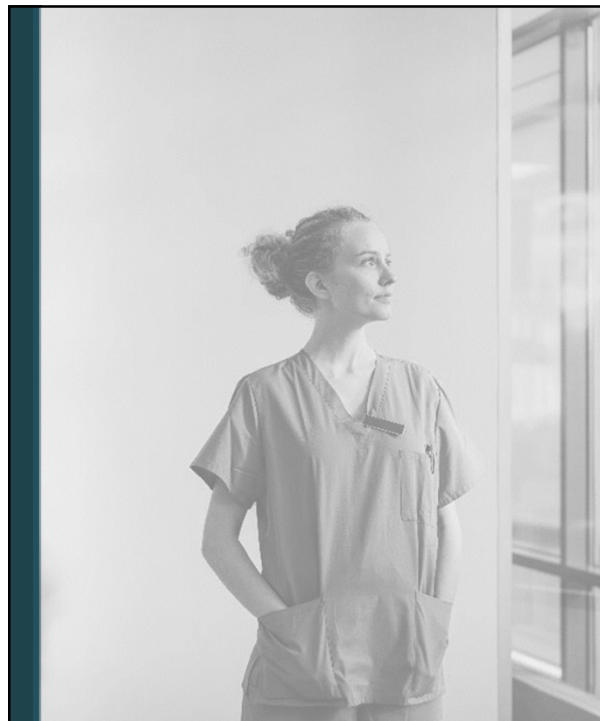
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### What's On The Horizon?

- Private equity buying private practices
- Large systems hiring their own OBGYN providers
- Dissatisfaction with profession is at an all time high
  - More physicians are retiring earlier
  - Stopping obstetric part of practice
  - Decreases call hours
  - Lowers malpractice costs
- Estimated shortage of over 5,000 OBGYNs by 2030

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## OB Claims Mitigation

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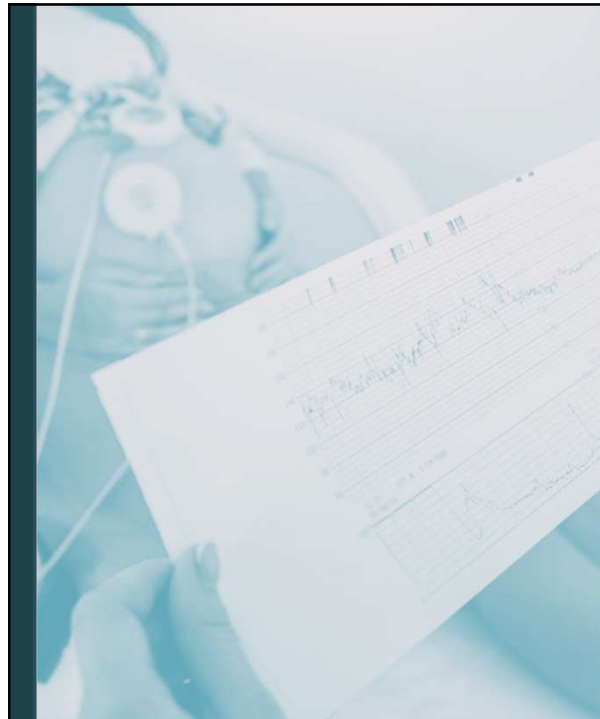


## Virtual Simulation Training



- TJC January 2021
  - Perinatal patient safety standards
- ACOG August 2024
  - Virtual simulation training in low to moderate volume hospitals in the US:
    - Feasible
    - Acceptable
    - Effective

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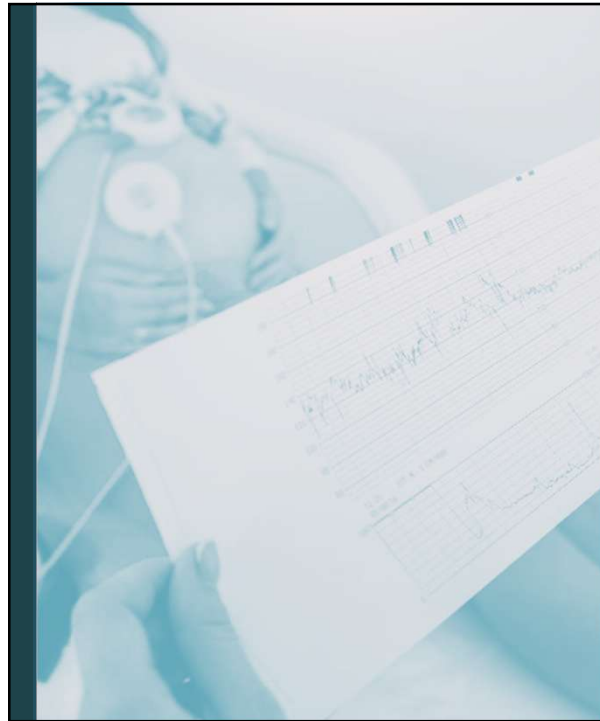


## EFM Strip Interpretations

- No standardizations in education regarding EFM interpretations
  - In-facility test vs. NCC Fetal Monitoring Certification
  - Monthly vs. annually
- Should require:
  - Certification
  - Monthly case studies with all team members present
    - Physicians
    - Nurses
    - Leadership

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## EFM Strip Interpretations

- Nurse Fellowships
  - Proven to improve nurse education for new graduates
  - Expensive – many hospitals do not want to undertake

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## Team Training

- Mutual respect through teamwork
- Everyone should be included
  - Physicians
  - Nurses
  - Pharmacy  
Respiratory
  - Anesthesia
  - House officers, etc.

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## Team Training



### Communication of Negative Outcomes

Noted in prior case reviews



### Outcome-Based Data Utilization

Trace back to the root of the issue

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## Chain of Command

- Many large systems switching to laborist model to decrease costs
- Hiring midwives and mid level providers as first line
- OB triages going to emergency room billing model, staffing with mid-levels

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## Graduation Requirements



### Midwives

- 40 deliveries



### OBGYN Physicians

- 200 vaginal deliveries
- 15 operative deliveries
- Most residencies achieve many more

**Liability increases as there are more layers to the care**

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## Final Thoughts

- Large jury verdicts in obstetrical cases will likely continue in the future.
- There are multiple factors that make obstetrical cases different from other MPL claims.
- The critical importance of expert witness testimony, medical record documentation, jury selection and other factors can impact the outcome of obstetrical cases.
- Risk mitigation strategies should be strongly considered for any organization providing obstetrical services

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**Thank You**

