

What Matters Most: a legal-ethical analysis of active enquiries in obstetric care

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Mercy Health

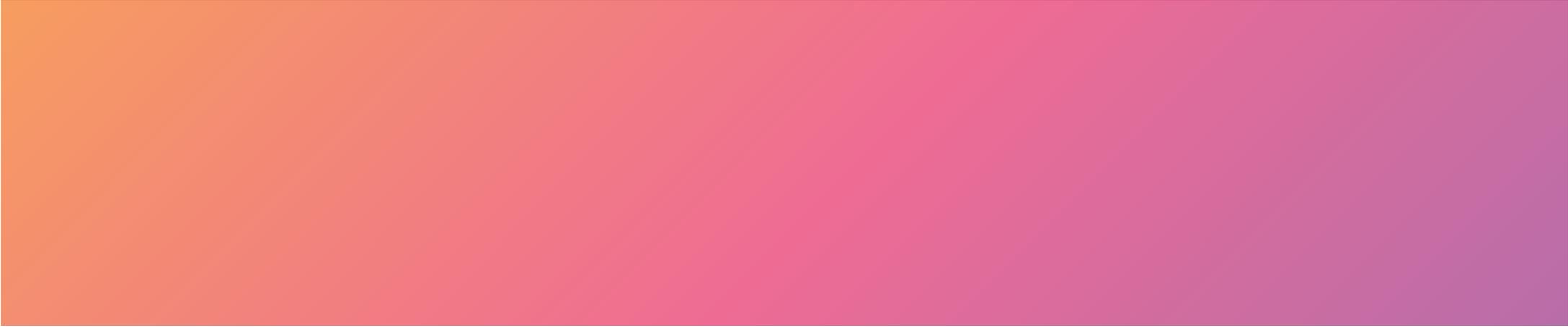
Care first



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Acknowledgement of Country



Overview



A patient case

Introduction



Research question and aims



An outline of birth trauma

Background



Legal and professional obligations



Ethical obligations and autonomy



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



Question: Should obstetricians have a legal obligation to make active 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

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



May 2024



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

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May 2024

Birth trauma



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



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

Legal obligations



Legal and
professional
obligations

Material risks are:

Risks the
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Risks the
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(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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Legal and professional obligations

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**

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.
- Lady Hale: “gone are the days that on becoming pregnant, a woman lost...her right to act as a genuinely autonomous human being”



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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.



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



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

October 2020

(The Medical Board of Australia, 2020)

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Legal and professional obligations



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

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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**.

(The Medical Board of Australia, 2020)

Patients cannot access compensation for harms due to inadequate enquiries

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).



Legal and
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obligations

There is an ethical argument for doctors to make active enquiries



Ethical obligations
and
autonomy

Ethical principles
often underpin
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Ethical obligations and autonomy

Ethical principles often underpin codes of conduct

Doctors have a duty to strive for moral excellence

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Ethical obligations and autonomy

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Doctors have a duty to strive for moral excellence

Meaningful choice requires a patients' choices to reflect their values, not just medical facts

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

The problem



The problem

Ethical obligations

We should be making active enquiries to respect patient autonomy

Legal obligations

No legal obligation to make active enquiries

Professional obligations

Obligation exists but active enquiries not being reliably made

The problem



The problem

Ethical obligations

We should be making active enquiries to respect patient autonomy

Legal obligations

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Professional obligations

Obligation exists but active 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 active 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).

Active enquiries

=

Standard antenatal hx

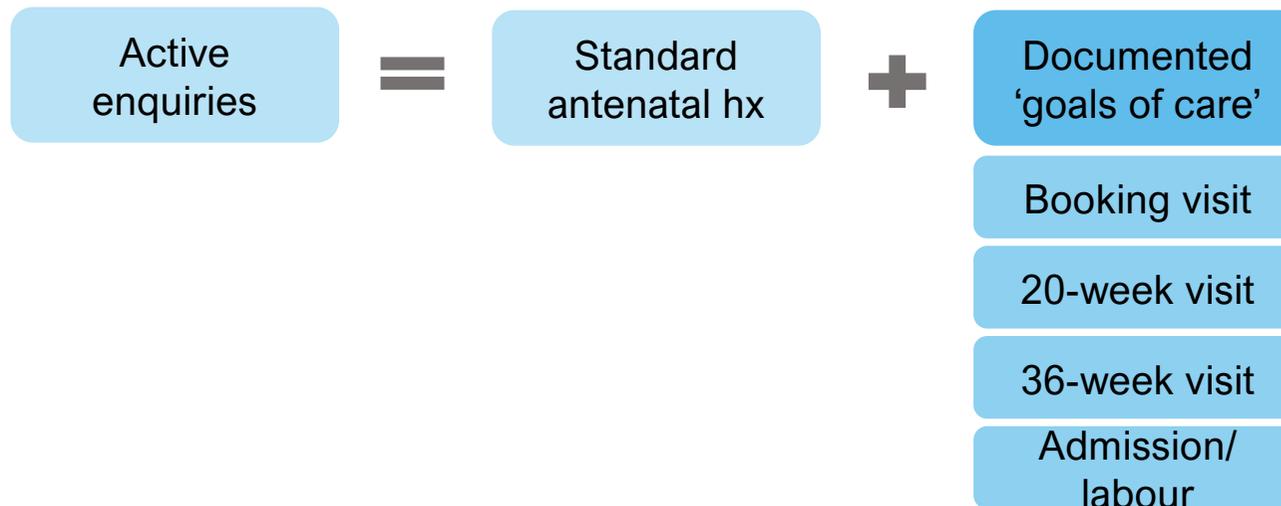
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Documented 'goals of care'

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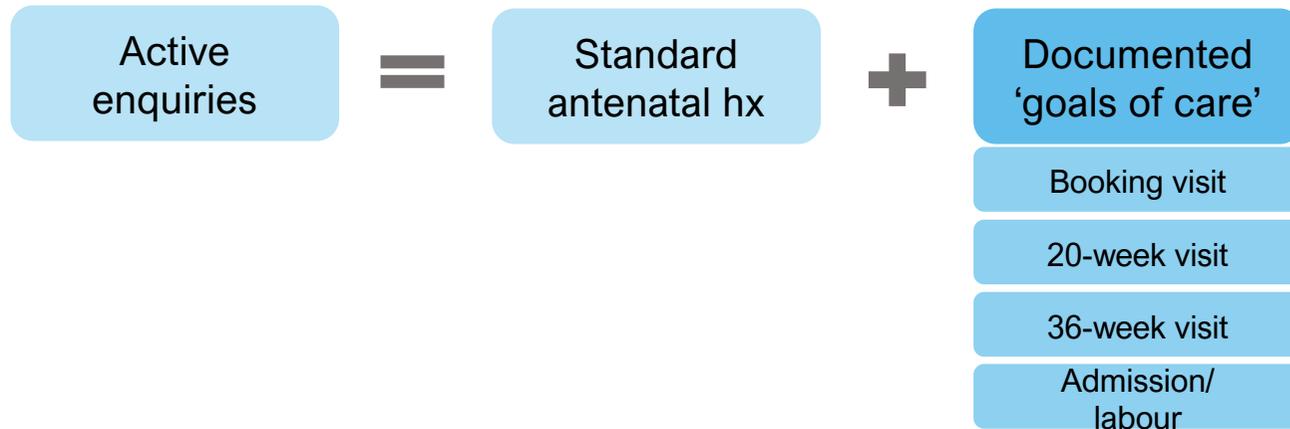
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Formal documentation

Improved communication

Risk identification

Tailored antenatal education



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Active enquiries

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Standard antenatal hx

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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

Current legal obligations do not adequately support patient autonomy, and professional obligations are not reliably implemented



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

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Thank you!

Questions?