

LITIGATION

The importance of being **Meticulous**

11th SASUOG congress
Bloemfontein May 2010

Prof Edward Coetzee, Fetal Medicine Unit, UCT/GSH

Is there need for concern amongst
healthcarers doing fetal U/S?

● **YES!!!**

OB litigation; the changing picture

- Litigation for birth asphyxia and resultant HIE is declining [especially in private practice]
- Our legal fraternity are looking for something else to fill the gap
- Everyone knows that U/S imaging of the fetus should detect fetal abnormalities
- If a baby is born with a fetal anomaly some one is to blame!!

Who do I blame?

- The patient searches the internet
- This will almost always reveal that someone has published an article somewhere on how U/S detected the anomaly of interest
- The next question is why did my doctor not detect it?
- Next step; back to the internet to find a lawyer to sue the doctor

NO one is free of blame!!

- If you do not do your own scanning then refer to doctor with the adequate skills
- In some cases biochemical screening is still appropriate
- If you do your own scanning are you adequately trained for the level of service that you are claiming to offer
- ***Can you prove that!!***

The next victim of litigation
could be you!!!



Cost of Medical Litigation in State Hospitals [SAMA]

- KZN 2009/2010: R547 m
- Mpumalanga: R19m
- Gauteng: R10m
- WC : R6m
- EC : R8m
- NC : R 23m since 2007
- Northwest: R11.5

Cost of U/S related litigation

- Unknown
- However I have been asked to give my opinion in 5 cases over the last 4 months
- Previously my opinion would be requested in one case per year
- There is a massive increase in U/S related litigation

Wrongful Birth

- Legal cause of action in some common law countries in which parents of a congenitally diseased child can claim that their doctor failed to properly warn of their risk of conceiving or giving birth to a child with serious genetic or congenital abnormalities

Wrongful Life

- Claim brought on behalf of a child born with a birth defect alleging that he or she would never have been born if not for the negligent advice or treatment provided to the by a health care provider

To detect the maximum number of fetal anomalies possible

- 2 scans are required

- 1) 11 → 14 week scan: Down's detection + certain anomalies
- 2) 20 → 22 week scan: a detailed anatomical scan

The 11 → 14 week scan

- There is abundant evidence that proper training and audit are a vital component of accuracy and therefore of sensitivity
- SASUOG together with the great majority of the U/S world recognise that training and audit should be done by the Fetal Medicine Foundation [London]
- Training involves study, examination, logbook with pictures and audit
- Accreditation is only given for a limited time and must be renewed

The 11 → 14 week scan

- SASUOG will not support any doctor who does the NTT+ at 11→14 unless they are accredited with the FMF
- If you are not accredited DO NOT link your result to the biochemical results

The 20 → 22 week detailed anatomical scan

- A minimum of Level 2, but preferably level 3 skills
- The scan must be done according to a structured protocol and all aspects as required on the report form on the SASUOG website must be covered
- The detailed form covering EVERY aspect must be written immediately

Being meticulous

- Informed consent
- Always follow a structured protocol
- Record all your findings in real time
- If you are certain of your images and you have the facilities store key pictures on the hard drive of your machine
- The patient must always be given a copy of you report. She is entitled to it

Informed consent

- The patient must tell you what she expects of the scan
- Does she want to know about fetal anomalies and what is her attitude about TOP
- You must tell her what you can offer i.e. level 2 or 3 scanner and experience
- Rather refer if you are in doubt that you meet her expectations
- A signed agreement is preferable, but if not write notes

Appropriate U/S Equipment

- Resolution
- Magnification & Zoom
- Callipers capable of measuring 0.1 mm
- A curvilinear transducer with a broad band of frequencies, capable of moving up and down the frequency range
- Good colour & doppler

Stay focussed

- Concentrate on getting the information required in a systematic way and do not get involved in boutique scanning

In a level 2 scan your report must cover the following

- Placenta & AF
- BPD, HC, AC & FL
- Intracranial:

TCD, CM & LVA

- Face: Coronal & sagittal
- Chest: size of heart, orientation, 4 chamber view, echo-dense or -lucent structures
- Spine: sagittal, coronal & axial till sacral tip

In a level 2 scan your report must cover the following

- Abdomen:diaphragm, ant. abdominal wall, stomach bubble[orientation], other sonolucent areas,kidneys and bladder
- Check appropriate length and presence of humerus, radius, ulna, femur, tibia & fibula[L&R]
- Hands & feet
- 3 vessel cord
- **Sexing is not important**

Screening

- Understand the basic principles of screening including DR, sensitivity, specificity, FPR, FNR, predictive value of a +ve or -ve test and ROC curves
- Be up to date about screening protocols
- If you are doing NTT you **MUST** be accredited with FMF

The degree of negligence

- You will always be judged by the accepted standards for the average obstetrician [sonographer]
- What are these standards?
 1. SASUOG
 2. SASOG
 3. RCOG
 4. NICE

The degree of negligence

- What was your agreement with the patient
- Were you appropriately trained to do what you agreed to do
- What proof do you have of your U/S training
- If in doubt always refer where possible
- What is the evidence in published work that the average scanner should pick up the specific abnormality being sued for

Missed abnormalities that would be difficult to justify in court

- Anencephaly
- Holoprosencephaly
- CCAM
- Chylothorax
- Duodenal atresia
- Intestinal atresia

Missed abnormalities that would be difficult to justify in court

- Omphalocele
- Renal abnormalities
- Limb defects
- Dwarfism
- Certain Heart defects
- Hydrops fetalis

Good prophylaxis against being sued

- Speak to your patient empathetically and carefully explain what you are seeing
- Explain to her that you and U/S imaging are not infallible and some lesions can be missed, but you will assure her that you will offer her the best opinion possible

Have you missed a Fetal Anomaly

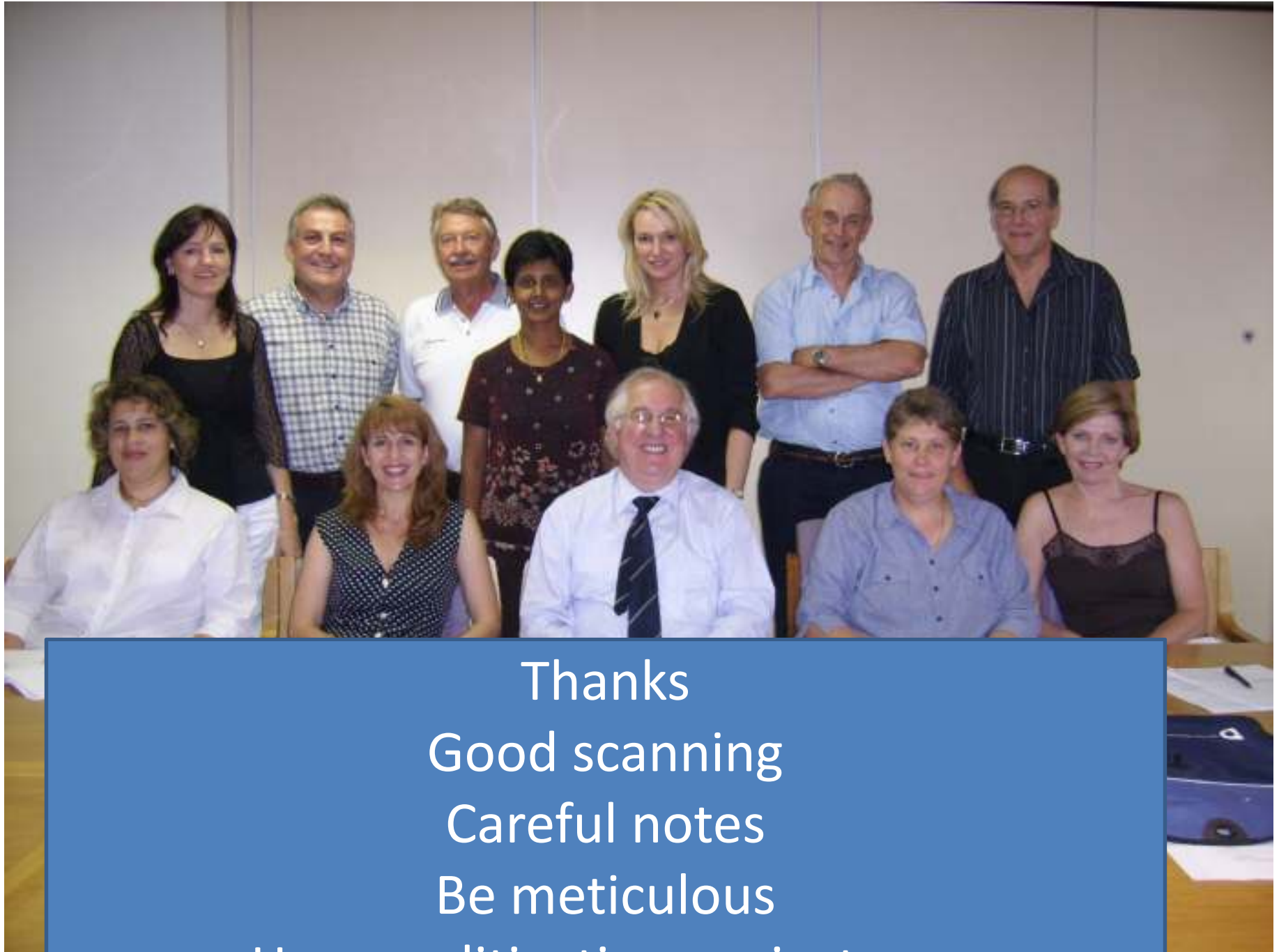
- Discuss it with a caring manner with your patient
- Try and explain what you think could have happened to explain the missed diagnosis
- Do not avoid the patient or her family
- Give maximum support

Top reasons for U/S litigation

- Downs Syndrome
- Spina Bifida
- Hydrocephaly

These conditions are relatively common and there is a huge body of evidence that they are diagnosable prenatally

The newborn has a reasonable chance of survival and will require expensive medical treatment



Thanks
Good scanning
Careful notes
Be meticulous
Have no litigation against you