

Concept of medical expertise in Obstetrics and Gynecology

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Abstract

In Turkey, Gynecology and Obstetrics is the field with the highest rate of judicial-administrative problems among expertise fields. It often plays a significant role in the judicial decision in files which are engaged in lawsuit requiring medical expertise. The duty of medical expert is only to explain if the evaluation, examination or treatment/surgery performed by physician conforms to the established medical rules or not and other events causing harmful results, together with scientific grounds. The expert should know legal arrangements about expertise. Expertise has two types which are judicial expertise and medical expertise. As of 2010, the obligation for penal courts to take decision from Supreme Council of Health was annulled. Apart from them, “scientific opinion” can be asked pursuant to the article “expert opinion” according to the Code of Civil Procedure. Also, “expert opinion” can be received from peer hospitals, private branch hospitals and expertise societies. Medical expert should state if it is acted in accordance with medical science and code of practice during the procedure or not instead of stating if those performing the procedure are faulty or not. In concrete cases, “Judge” has the right to determine the flaw. In medical errors, it especially should be explained if healthcare professional claimed to be the faulty one paid attention as required during procedure or not, if he/she was negligent according to the medical requirements and rules or not, if he/she conformed to “Medical standards” or not, and if was there any difference between those that should be done according to medical science & technique and the performance and treatment performed. The comments of medical expert should be comprehensive, fair and unbiased. Medical experts should have some characteristics with their knowledge, reporting and evaluation. Therefore, there are always negative discussions about expertise. Presence of completely opposite opinions in the reports taken from various experts is one of the reasons. The discussions on “Expertise Law Draft” prepared for such reasons in the beginning of 2016 still continue.

Keywords: Medicolegal, expert, delivery cases, malpractice, mal-occurrence.

Özet: Kadın-Doğum’da tıbbi bilirkişilik

Ülkemizde uzmanlık dalları içinde en fazla adli-idari problemin çıktığı dal Kadın Hastalıkları ve Doğum’dur. Tıbbi bilirkişilik dava konusu olan dosyalarda hâkim kararında sıklıkla önemli rol oynamaktadır. Tıbbi bilirkişinin görevi hekim tarafından yapılan değerlendirme, tetkik, tedavi/ameliyatın yerleşmiş tıp kurallarına uygun yapıp yapılmadığını, varsa zararlı sonuçta etkin olan diğer olayları, bilimsel dayanaklarıyla açıklamaktan ibarettir. Bilirkişinin bilirkişilik müessesesi ile ilgili hukuki düzenlemeleri bilmesi gereklidir. Bilirkişilik, adli bilirkişilik ve tıbbi bilirkişilik olarak ayrılır. 2010 yılından itibaren ceza mahkemelerinin Yüksek Sağlık Şurası’ndan karar alma zorunluluğu kaldırılmıştır. Bunların haricinde Hukuk Muhakemesi Kanununa göre “uzman görüşü” madde başlığı altında “bilimsel mütalaa” alınabilir. Uzmanlık görüşü hakem hastanelerden, özel dal hastanelerinden ve uzmanlık derneklerinden alınabilir. Tıbbi bilirkişi; tıbbi girişimde bulunanların kusurlu veya kusursuz olduklarını değil, girişimde tıp bilimi ve meslek kurallarına uygun davranıp davranılmadığını belirtmelidir. Sonuçta kusuru belirleme yetkisi Hâkim’e aittir. Tıbbi hatalarda, hatayı yaptığı iddia edilen tıp mensubunun müdahalede gereken dikkat ve özeni gösterip göstermediği, tıbbın gerek ve kurallarına göre olayda ihmali olup olmadığını, müdahalede “Tıbbi standartlara” uyup uymadığı, tıp bilimi ve tekniğine göre yapılması gereken ile yapılan müdahale ve tedavinin farklı olup olmadığı konularının özellikle açıklanması gerekir. Tıbbi bilirkişinin yorumları kapsamlı, adil ve tarafsız olmalıdır. Tıbbi bilirkişiler donanımları, rapor verme ve değerlendirmeleri ile bazı özelliklere sahip olmak zorundadırlar. Bu nedenlerle bilirkişilik, üzerinde olumsuz tartışmalar yapılan kurumlardan biridir. Değişik bilirkişilerden alınan raporlarda, birbirine tamamen ters düşüncelerin var olması bunun en önemli nedenlerindendir. 2016 yılı başında bu nedenlerle yeni hazırlanan “Bilirkişi Yasa Tasarısı” üzerinde değerlendirmeler halen sürmektedir.

Anahtar sözcükler: Medikolegal, bilirkişi, doğum davaları, malpraktis, tıbbi kötü olay.

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Introduction

Gynecology and Obstetrics is the leading field among many expertise fields in terms of medico-legal issues in Turkey and the world, and it causes the status of the field to get harm. Medical expertise of Gynecology and Obstetrics which often plays a significant role in the judicial decision in files which are engaged in lawsuits, and related legislation and the criteria shedding light to the evaluation are discussed in this study.

The scores of Gynecology and Obstetrics decreasing from the highest to the lowest ones, which also reflect to Examination for Specialty in Medicine, due to various factors such as medicolegal problems in 2000s in particular, difficult work environment, populist policies and financial reasons etc. and the advanced loss of status presenting with the highest rates of resignation within last 10 years among the assistants working in Gynecology and Obstetrics field remind us “The Lost Honor of Katharina Blum” of Heinrich Theodor Böll, the winner of Nobel Prize in Literature in 1972. Yet, the Republic of Turkey managed to decrease maternal mortality rates to 15.8/100,000 during 2003–2014 which was 68/100,000 in 1990s, compared to member countries of Organization of Economic Co-operation and Development (OECD) which managed to achieve same rate in 23 years;^[1–3] the lion’s share in this achievement belongs to devoted Obstetricians and Gynecologists undoubtedly. Obstetricians- Gynecologists are neither appreciated nor earn respect for this success. Obstetrics and Gynecology is the only branch that is at the top of the agenda with cases reflecting to the media in an uncontrolled way and devoid of any reality, with working conditions for 365 days and 24 hours in a year, having the highest rates of emergency cases and two patients at the same time as mother and fetus. It is also same in Turkey and it is the branch with the highest rate of judicial-administrative problems (16%) among expertise fields (**Table 1**).^[4] The reviews of the cases files between 2001 and 2010 submitted to the Supreme Council of Health show that the rate of lawsuit is highest among Obstetricians-Gynecologists compared to other health-care professionals. In 1684 penal files and total fault rate of 39.8% with 670 files between 2001 and 2006, obstetrics-gynecology has been found faulty in 114 files among 262 files, which is 43.7% (**Fig. 1**). In the same period, the fault rate is 88 (47.6%) out of 185 files for general surgery, 106 (34.2%) out of 310 files for general practitioners, and 63 (24.5%) out of 257 files for nurse midwife.^[4,5]

Table 1. Distribution of criminal suits by branches evaluated in Supreme Council of Health between 2001 and 2010.

Branch sued	Total	%
Practitioner	475	16.83
Obstetrician	462	16.37
Midwife-Nurse-Medical assistant	461	16.33
General surgery	300	10.63
Orthopedics	188	5.28
Pediatrics	149	5.2
Internal medicine	125	4.43
Anesthesiology-Reanimation	108	3.83
Neurosurgery	92	3.26
ENT	62	2.20
Urology	51	1.80
Cardiothoracic surgery	47	1.66
Anesthesia technician	46	1.63
Ophthalmology	45	1.59
Neurology	37	1.31
Psychiatry	26	0.92
Cardiology	25	0.88
Plastic surgery	25	0.88
Dentistry	23	0.81
Pediatric surgery	19	0.67
Radiology	19	0.67
Infection	8	0.28
Dermatology	5	0.17
Other	25	0.88
Total	2823	100

High fault rate of obstetricians-gynecologists was also reflected into the professional liability researches conducted in the United States of America and as a result, difficulties were experienced among Gynecologists and Obstetricians and especially in the fields of Obstetrics and Perinatology. While 23.8% of the physicians decreased the number of their high-risk pregnant patients, 17.0% of them increased the rate of cesarean section (C/S), 13.4% of them decreased to offer vaginal delivery after C/S, 9.3% of them decreased to carry out delivery, and 5.1% of them completely stopped to attend delivery operations. About 13.1% of the wages of obstetricians & gynecologists decreased more than 10%, 2.6% of obstetricians & gynecologists started to work in another workplace or moved to a location having a different jury, and 0.4% of them stopped paying for insurance. Its reflection in gynecology is the decrease in 12% of gynecological surgical procedures, decrease in 4.9% of major gynecological surgical procedures, and quitting surgery completely in 1.4% of them.^[6]

Offenses against individuals according Turkish Penal Code are evaluated in the same way for either doctors or electricians since the laws are arranged in accordance with general legal rules; however, matters related with professions, especially like medical expertise which has 14 years of education after high school, requires additional knowledge other than law; therefore, it is frequently required to refer to an expert. Arrangements about expertise were defined in the law as below.

Cases to Refer Expertise

Article 266: In cases where the resolution requires special technical or knowledge other than legal ones, the court decides to take vote and opinion of an expert either itself or upon the request of one of the parties. In cases where it is possible to resolve the matter with general and legal knowledge of judge, expertise is not referred. The duty of medical expert is only to explain if the evaluation, examination or treatment/surgery performed by physician conforms to the established medical rules or

not and other events causing harmful results, together with scientific grounds.^[7-12] The expert should know legal arrangements about expertise.^[8,9]

Arrangements about Expertise

Code of Civil Procedure, Article 278: Expert performs his/her duty under the management of court. If expert hesitates about assigned duty and limits, s/he may always request the court to eliminate this hesitation. If expert needs during the evaluation, providing that the court approves, s/he may refer to the information of parties. In such cases, it is reminded to expert by court that one of the parties cannot be listened unless other party is also present. In order to explain vote and opinion by expert, the expert may carry out necessary investigations if it is required. Parties may be present during such investigations.

Expertise has two types which are judicial expertise and medical expertise (**Table 2**). In cases related with medical science, official expertise organizations are the Institution of Forensic Medicine, Supreme Council of

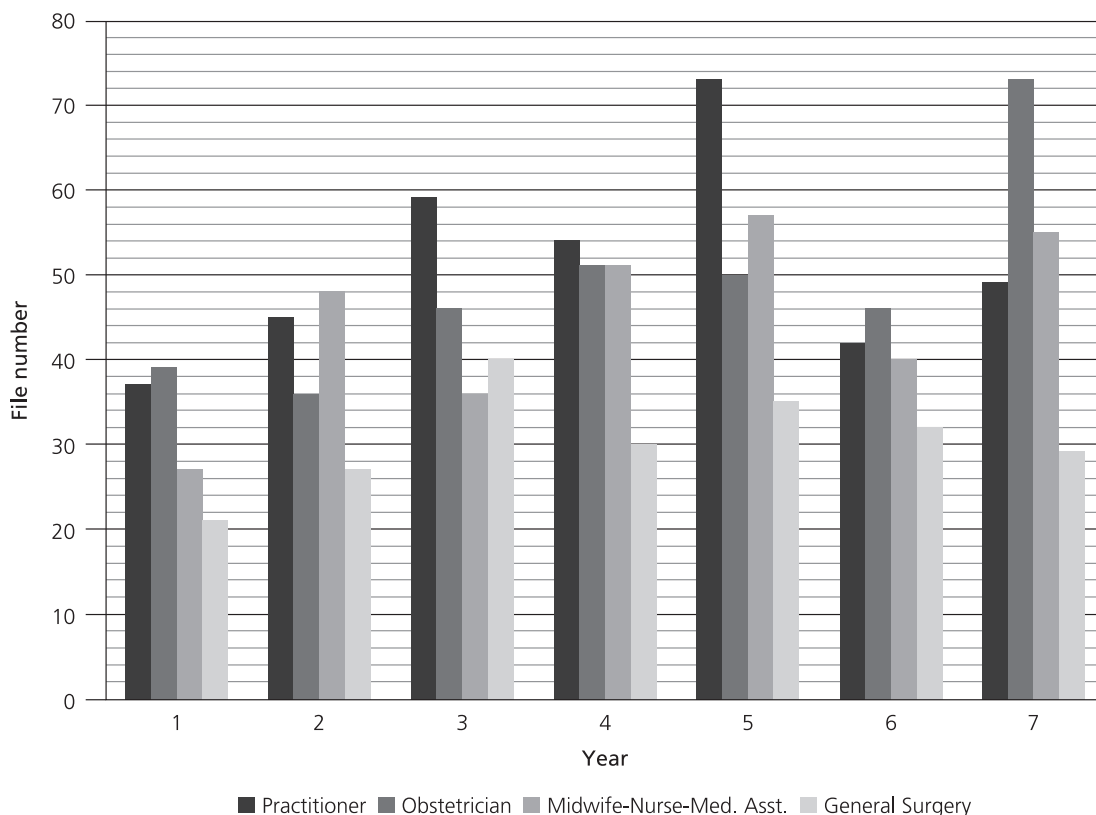


Fig. 1. Distribution of personnel who are defendants in the files of Supreme Council of Health between 2001 and 2006.

Health and universities. Among them, Institution of Forensic Medicine has 6 Expertise Boards and 1st Forensic Medicine Expertise Board has an obstetrician as a member for deaths with unknown reasons. 6th Forensic Medicine Expertise Board also has an obstetrician as a member for cases such as offenses against public morality and family order, felonies regarding lineage, illegal abortion, cases stated in Articles 53, 54, 55, 57 and 58 (except clause 3) of Turkish Penal Code and determination of sexual potency. Although Supreme Council of Health was defined as the institution to decide in penal proceedings until 2010, the obligation of criminal courts to take decision from Supreme Council of Health was annulled with the decision of Constitutional Court dated 22.10.2010 due to heavy workload of the Council which gathers once a year and the problems related with time in the process of justice.

Except these three official organizations, Article 293 of Code of Civil Procedure defined a new institution with the title “expert opinion” and established a legal ground for “scientific opinion”. Also, “expert opinion” can be received from peer hospitals, private branch hospitals and expertise societies. Expert opinion or scientific opinion from the expert can be taken in order to present before expertise report and to submit for the evaluation of expertise, to reveal and remove errors and conflicts in the expertise report after the preparation of expertise report, and to support or disproof the claims in the case.

Due to the importance of expertise, there are always negative discussions about expertise. There are negative comments in the media from time to time about expertise such as “sore spot”, “expertise scandal”, “Experts are more influential than judges and more dangerous than enemies”.^[8] Completely opposite opinions in reports taken from different experts are the main reasons for such negativity; “Expertise Law Draft” prepared for such reasons in the beginning of 2016 has still been discussed and waiting for approval.^[12]

In the process of a lawsuit, medical expert should know two articles of the law and the expertise regulation: **Code of Civil Procedure, Article 178:** When chief judge or judge declines the petition about calling witness or expert produced by defendant or participant, defendant or participant may bring such individuals. These individuals are heard out during the trial.

Code of Civil Procedure, Article 179: Within a reasonable period, defendant notifies public prosecutor about

Table 2. Differentiation of medical expertise and judicial medical expertise.

Judicial medical expertise	Medical expertise
Issues requested by judge-prosecutor	Issues not requested by judge-prosecutor
<ul style="list-style-type: none"> Carried out upon official request by court/prosecution office. It is the decision of healthcare professional to be expert or not. Carries out expertise duty pursuant to the legislation stipulated by laws (oath, receiving-submitting files). Liable to prepare an official report for requesting authority. Receives “expertise fee” from related judicial authority for the duties carried out. 	<ul style="list-style-type: none"> No official request by court/prosecution office; individual application is sufficient. No option for not being an expert; application of individuals is sufficient. Carries out expertise duty without following any legislation. No liability to submit an official report. There is no “expertise fee”.

the names / addresses of experts and witnesses to be invited directly or brought during the trial. If public prosecutor will invite others either by himself or with the judicial decision in addition to witnesses and experts invited upon the request of defendant or shown in the bill of indictment, public prosecutor informs defendant about the names and addresses of such individuals within a reasonable period.

The regulation about the arrangement of expert lists and applications is given in **Table 3**.

Table 3. Regulation about arranging expertise lists.

Regulation Concerned About the Arrangement of Expert Lists by Provincial Judiciary Justice Commission Pursuant to Code of Criminal Procedure	
Official Gazette No.: 25832	Official Gazette Date: 01.06.2005
Expertise applications are accepted under following conditions:	
<ul style="list-style-type: none"> Having the legal capacity as of application date, Having at least three years of professional experience on expertise area, Not convicted for crimes against the state, debt, corruption, bribery, robbery, fraud, forgery, breach of faith, fraudulent bankruptcy or smuggling, conspiring to rig the bid or trade, being expertise contrary to facts, perjury or false oath, even pardoned or suspended, Not being dismissed of profession or public office due to disciplinary aspects or not being temporarily banned from fulfillment of art, Not being removed from an expert list previously except voluntarily, Living or performing professional activities in judicial locality of commission, Not being registered to the list of another commission, Possessing conditions required by the regulation to perform duties as the member of profession, For those required to register to an occupational organization to perform his profession, possessing certificate, expertise document, certificate of authority and similar documents showing the area of expertise in order to be an expert in accordance with the regulation 	

Challenging of expert, exemption from expertise and the liabilities of expert: Experts can be challenged like judges. This shows how the laws care about expert as much as judges.^[12,13] Experts may only withdraw from expertise duty according to the terms about exemption from testifying. Expertise liability is a serious civil service. If there are strong indications that the material facts provided in expertise reports do not reflect the truth, there are legal (indemnity) penal (Articles 37-250-252-257-258-266-277 of Turkish Penal Code) liabilities and sanctions such as removal from the list.

Expert:

- Should be reliable on matters regarding to his/her expertise area and should have solid medical knowledge,^[8]
- Should have basic knowledge about legal area where medical problem occur,^[8,9]
- Should know the presence of medical judicial discretion and especially medical jurisdiction, and be able to sort out and find fundamental matters, which are significant legally, from many medical cases,^[12]
- Should be able to express the results found regarding to the medical case in a way that legal professionals can understand, and with concrete scientific-logical grounds,
- Should be able to self-criticize and be flexible when written opinion is required to be changed in case of a new fact,
- Should be objective and unbiased towards disputed matter and the parties.^[7-15]

Who Will Be Expert/How to Conduct/What Are the Possible Flaws in Medical Malpractice Cases?

Following three cases show the importance of preparing expertise report accurately, completely and carefully.

Case 1

Matter in dispute: Forensic Report: *"It was reported that vaginal spontaneous normal delivery was accomplished in Private Hospital after the pregnant woman was admitted in labor. She was discharged with full recovery. The patient was re-hospitalized in Medical Faculty hospital due to severe abdominal pain that aggravated 11 days after delivery. Ultrasonography revealed adnexial mass giving the impression of pelvic hematoma. Laparotomy was performed and intraoper-*

ative dissection demonstrated right side uterine rupture originating from the high cervical region together with abscess formation, and therefore total hysterectomy was performed."

It was reported that *"It was medically right decision to carry out the delivery of the patient with normal spontaneous procedure, and the hematoma and uterus rupture observed in the intraoperative screening 11 days after the delivery could be seen at late period even rarely after normal spontaneous deliveries, and this was an unpredictable and preventable case, it was not caused by medical practice and since maternal death risk is high in such cases, hysterectomy was a necessary practice inevitably, and the practices performed at Private hospital was consistent with medical rules and that it was concluded unanimously that regarding physician and healthcare personnel had no error in this case".*

The objection reasons of Institution of Forensic Medicine were: *"The Specialization Department prepared the report only based on the documents of defendant private hospital and university hospital, but the hospital documents were not investigated thoroughly and while antenatal records, the records on delivery date and following medical center records as well as the records of university hospital for the patient should be investigated together and the report should be prepared accordingly, there were not included in the evaluation".*

Case 2

While the physician stated that a healthy baby would be delivered as a result of the examinations performed, it was seen that the bone under the left arm of the baby was missing and the right hand was beginning from the wrist. The physician was found not guilty in the report issued by the Institution of Forensic Medicine and the court of first instance announced the dismissal of the case. However, the Court of Appeal reversed the judgment on the grounds that the report of Institution of Forensic Medicine was insufficient and it was not investigated if the physician carried out the duty or not.^[16]

Case 3

The patient died after the cholecystectomy, and the suit brought upon this incident was accepted by the court of first instance and the court adjudicated against the physician. The Court of Appeal reversed the judgment on the grounds that the report did not give any details if the physician acted improperly against the duty of care or not, and therefore it was not appropriate to adjudicate based on this report. It was decided that the judgment would be made after the report to be prepared by a council consisting of academicians.^[17]

Points to Take into Consideration when Preparing Expertise Report

- The scope of the duty should be understood accurately and completely.
- It should be prepared after necessary investigations.
- It should be prepared that a report prepared during any judicial process or statement given may lead to prejudication by any organization or affiliated trade body.

Evaluation in Expertise/Relationship between Patient and Physician - Causal Link

Between 2013 and 2015, 108 out of 625 lawsuits brought against the Ministry of Health are associated with obstetrics, especially on pregnancy and delivery complications. Cerebral palsy, shoulder dystocia, undiagnosed fetal anomalies, infant deaths and maternal deaths are the main matters in dispute. Significant details about Law of Obligations, Medical Code of Ethics and Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine that the relationship between patient and physician are shown in **Table 4**. One of the elements taken as a basis in the consideration given in the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine is professional standard (Article 4). Including investigation, any procedure in healthcare area should be conducted in compliance with related professional liabilities and standards. Professional standard should be determined for cases in dispute; however, it is disputable “what should be professional standard”. Classical book knowledge, continuous medical trainings, directives, applications with evidence level 1A, recommendations and expert opinion may be applicable for professional standard. Considerations for carrying out medical practice or not are stated by evidence levels (**Table 5**). The point grabbing attention here is that there is no conclusive result in all practices except evidence level A.^[18] Treatments may end up with different results in different patients; therefore, it is mostly not possible to refer a standard practice. Yet, evaluating evidences as good, medium, weak in “evidence-based medicine”; evaluating recommendations in rating system as “1” for strong ones and “2” for weak ones, and determining as very low quality evidence (+), low quality evidence (++), medium quality evidence (+++) and high quality evidence (+++++) show that different

Table 4. Legal arrangements in patient-physician relationship.

<p>Law of Obligations, Article 506: “Attorney is responsible to conduct the assumed duties and services faithfully and meticulously by protecting right-ful benefits of proxy giver. In determining the liability arising out of the private debt of proxy, the acts which should be shown by a prudent proxy assumed duties and services in similar areas are taken as a basis.” The arrangements do not guarantee the recovery of patient by physician. The liability of physician is to fulfill his duty of care. Physician who fulfills his duty of care cannot be liable. In fulfilling duty of care, physician is responsible even for his slightest fault. Physician is obliged to perform all occupational duties, to identify medical condition of patient on time without delaying, to take precautions completely required by the concrete condition and to determine and apply appropriate treatment without any delay in order to prevent patient to get harm. When making a choice among various treatment methods, physician should consider patient and patient’s condition and choose the safest method by avoiding attitudes and behaviors that would put patient at risk. Physician should follow the latest medical advancements and apply them (Decision No. 2003/13959e, 2003/2380k dated 06.03.2003 of 13th Civil Department, Court of Appeal).</p>
<p>Medical Code of Ethics: Enforcing Cabinet Decree: No. 4/12578 - January 13, 1960 (Published and announced by Official Gazette: February 19, 1960 - No. 10436) Article 6 - Physician and dentist act according to conscientious and professional opinion without being under any influence when practicing their skills and professions. Physician and dentist are free to determine the treatment to be applied.</p>
<p>Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Law No. 5013 Concerning Convention on Human Rights and Biomedicine: Official Gazette: 09.12.2003-25311). The parties of this agreement shall protect the dignity and identity all human beings, and shall secure that the integrity and other rights and freedoms of everyone without discrimination are respected when applying biology and medicine. Each of the parties shall take precautions necessitated by domestic law in terms of carrying into effect the terms of this convention.</p>
<p>Article 2. (Priority of human being): Benefits and welfare of human being shall be regarded above the benefits of science or society.</p>
<p>Article 3. (Utilizing healthcare services fairly): By considering the needs for health and utilizable sources, parties shall take precautions appropriate for ensuring individuals to utilize healthcare services fairly in their own domination areas.</p>
<p>Article 4. (Professional standards): Including investigation, any procedure in healthcare area should be conducted in compliance with related professional liabilities and standards.</p>
<p>Article 5. (General rule): Any procedure in healthcare areas can be performed only after related individual agrees this procedure freely and as informed. Appropriate information shall be provided to this individual in advance about the purpose, characteristics, results and hazards of the procedure. Related individual may freely withdraw the consent at any time.</p>

results can be obtained. The answer to the question “what is standard practice” is important for that reason.

Standard Practices

- Evaluating patient under his/her responsibility,
- If on-call, performing his/her duty, and visiting when asked,
- Taking medical history (complaint-health history),
- Examination,

- Utilizing diagnosis methods,
- Interpreting (informing),
- Filling/making fill informed consent form,
- Conducting operations,
- Knowing undesired complications,
- Knowing unexpected complications,
- Carrying out treatment,
- Following up/screening.

The expert is expected to distinguish the difference between maloccurrence and malpractice and to reveal if there is a cause and effect relation between the procedure performed and the case in dispute or not, and if the case occurred whether due to the deficiency/error associated with direct practice or not together with the evidences.^[19]

Medical Maloccurrence

It is the poor outcome not associated with the quality of the service provided by the healthcare team. In this regard, expectable medical and surgical complications (they cannot be prevented even though appropriate medical services are provided), unpredictable and unpreventable complications, and applications and options which are given after patient is fully informed but when it is retrospectively reviewed, it is thought that other options could be better and therefore they are considered not quite appropriate are all included in medical maloccurrence.^[20]

Medical Malpractice

Following definitions are considered as malpractice:^[20-22]

- According to the 44th General Assembly of World Medical Association (1999), malpractice is the harm occurring when physician does not perform standard practice during treatment, or lack of skills or not treating patient.
- According to the Article 13 of Professional Code of Ethics of Turkish Medical Association (1998), malpractice means the harm sustained by a patient due to showing no interest or inexperience.^[22]

Table 5. Grading the quality of evidence and strength.

Grading the quality of evidence and strength by United States Preventive Service Task Force (USPSTF): Grading of Recommendations, Assessment, Development & Evaluation (GRADE). ^[16]	
A:	The USPSTF strongly recommends that clinicians routinely provide [the service] to eligible patients. (The USPSTF found good evidence that [the service] improves important health outcomes and concludes that benefits substantially outweigh harms.)
B:	The USPSTF recommends that clinicians routinely provide [the service] to eligible patients. (The USPSTF found at least fair evidence that [the service] improves important health outcomes and concludes that benefits outweigh harms.)
C:	The USPSTF makes no recommendation for or against routine provision of [the service]. (The USPSTF found at least fair evidence that [the service] can improve health outcomes but concludes that the balance of the benefits and harms is too close to justify a general recommendation.)
D:	The USPSTF recommends against routinely providing [the service] to asymptomatic patients. (The USPSTF found at least fair evidence that [the service] is ineffective or that harms outweigh benefits.)
I:	The USPSTF concludes that the evidence is insufficient to recommend for or against routinely providing [the service]. (Evidence that [the service] is effective is lacking, of poor quality, or conflicting and the balance of benefits and harms cannot be determined.)

Table 6. Distinction between medical maloccurrence and malpractice.

Medical maloccurrence	Malpractice
<ul style="list-style-type: none"> • Unpredictable cases for that patient • Predictable cases with no precaution • Predictable cases that are risked • Predictable cases with precaution taken (Allowed risk area) 	<ul style="list-style-type: none"> • Predictable cases without sufficient precautions taken <p style="text-align: center;">↓</p> <p style="text-align: center;">NEGLIGENCE (Disallowed risk area)</p>

- According to the decision of Court of Appeal, there is a fault if physician applies medical data improperly or incompletely, and if physician does not comply with the special duties required by the profession properly and sufficiently.^[13,14,22]

In malpractice, it should be shown that negligence or service below standards leads to harm (**Tables 6 and 7**). Therefore, in the expert report: Medical maloccurrence

Table 7. Medical maloccurrence/liability relationship.

Characteristics of maloccurrence		Name of result	Liability in result
Unpredictable	Unpreventable	Accident, coincidence	No liability
Predictable	Unpreventable	Complication	No liability (Providing that informed consent form is received from patient about predictable [expected] harmful result and no harm was not caused by quasi delict)
Predictable	Preventable	Medical malpractice	Liability appears

and malpractice should be distinguished. Expert should make all efforts to evaluate the relationship and causal link of claimed practice below standard. Deviation from practice standard may not always be care below standards or may not be related with a malpractice. Expert is responsible to reveal if only physician and healthcare professional acted in accordance with scientific and professional rules during medical practice or not. The decision of fault should not be given by the expert; the authority to determine fault in concrete case “belongs to Judge”. Medical expert should state if it is acted in accordance with medical science and code of practice during the procedure or not instead of stating if those performing the procedure are faulty or not. If anything contrary to scientific and professional rules is found, scientific opinion and reasons regarding which scientific and professional rule is violated should be presented, and if it was considered that there is nothing contrary to scientific and professional rules and that due care is exercised and there is no negligence, they are all should be stated in scientific opinion and reasons. In medical errors, it especially should be explained if healthcare professional claimed to be the faulty one paid attention as required during procedure or not, if he/she was negligent according to the medical requirements and rules or not, if he/she conformed to “Medical standards” or not, and if was there any difference between those that should be done according to medical science & technique and the performance and treatment performed.

Gynecology and especially Obstetrics due to its social aspect being the branches in which patient rights are abused the most has encouraged many unrealistic expectations related with professional responsibility. Transition from technology-oriented society to case-oriented society in health unfortunately creates unrealistic expectations. In medical expertise, it should be highlighted what is professional liability, and the facts and possible perception issues should be removed. Currently, studies related with quality assessment and development are maintained in Turkey and many developed countries in order to advance and improve healthcare services for women; however, populist statements and ignoring patient responsibilities are considered as the most significant problems against improvement and advancement.

Conclusion

- The lawsuits related with Gynecology and Obstetrics are the files considered to have the highest rates of malpractice.^[5,6,19,23,24]

- Medical expert should have experience and knowledge on the standards of the care provided during the period when the case subject to the legal action occurred; otherwise, medical expert should not make any assessment.
- Interpretation of medical expert should be comprehensive, fair and objective, and should not rule out any related information.^[19]
- It should be remembered that the decisions of medical expert should be referred usually when there is no diagnostic and prognostic certainty.^[19]
- Medical expert should distinguish malpractice and medical maloccurrence.^[19]
- Medical expert should certainly assess the causality relationship between the harm and the practice inappropriate for medical standards. It should not be ignored deviating from standard may not always be associated causatively with a maloccurrence.^[19]
- Medical expert should be prepared for testimony provided in any legal proceeding subject to equal assessment by affiliated body or a professional organization.^[19]

Precautions to be Taken to Decrease Fault in Malpractice Cases

- Delivery in a facility with seven days and 24-hour in-house obstetric coverage.^[21]
- It should be explained to pregnant women in particular that there may be a death risk related with any planned procedure and full approval of patient should be obtained.^[21]
- High-risk patients should be distinguished.^[6]
- It should be paid attention that there is no missing file/document, and standardized procedure notes are added.^[6,21]
- One of the reasons for patients to press a charge is to understand what the event is and why it happened and to prevent to encounter again. Therefore, a good communication with patient and explanatory and kind tone are very important to prevent a great number of claims to be filed.^[24]
- Healthcare personnel being well-trained and having necessary knowledge and skills, continuous on-the-job training, detecting deficiencies or problems and taking precautions are very important to prevent lawsuits.

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