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Of Medicine, Medical Law and the Elephant in the Room

George Gregory Buttigieg[1*] and Petar Uchikov[2]

[1]Faculty of Medicine and Surgery, University of Malta, Europe

[2]Assistant Professor, Medical University Plovdiv, Bulgaria

[*]**Corresponding author:** Buttigieg GG, Faculty of Medicine and Surgery, University of Malta, Europe, Tel: 0356 99494474; E-mail: george.g.buttigieg@um.edu.mt

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However dynamic, quick-acting and fearless a healer, especially a surgeon is, there are moments when he needs to pause and reflect. In fact, reflect and challenge - challenge aspects of the very science which underlies his practice. To many clinicians, the possibility that the science which rules all their steps could be faulty is completely inconceivable. Yet not only is the possibility a real one but the modern history of Medical Law provides us with an astounding example which has wreaked massive havoc on the lives of countless people. Yet, few people know about this elephant in the room. The story relates to the condition of cerebral palsy. The lack of discernment about the lessons which should have been learnt is muted because, unfortunately, medical law holds little magic for the clinician. Until destiny makes the subject cross one's path. Then it is another matter.

The elephant in the room here referred too is known to cognoscenti of the subject as the Great Cerebral Palsy Myth. We speak of no small matter. For the Myth underlay much serious medical litigation based on scientific assumptions which were later proven to be entirely wrong. The Myth could be divided into three main sections, namely:

1. The causation of cerebral palsy and
2. The ability of intra-partum CTG [IP CTG] to prevent cerebral palsy in the new-born
3. The ability of IP CTG interpretation to retrospectively and *unquestioningly* provide scientific evidence of obstetric intra-partum negligence.

Cutting a long, fascinating story unfairly short, we may briefly elucidate the mistaken beliefs which shook the medical world of the 1950's originating in the USA and spreading out to the "civilised" world. The new creed held that cerebral palsy was in its great bulk the result of hypoxia suffered by the foetus during labour and was thus preventable by good obstetric management. The development of IP CTG was expected to diminish the incidence of cerebral palsy and furthermore in a case of cerebral palsy where an IP CTG tracing was available, one could retrospectively "prove" obstetric shortcoming by wrong management of the CTG abnormalities. Bunkum science of the first order! Yet bunkum which influenced medicine *and the Courts* for a good half century. Bunkum which would later fall like a house of sand when later disproved. For, only a very small minority

of cerebral palsy cases are the result of peri-partum hypoxia, the wide use of IP CTG has no impact at all on the incidence of cerebral palsy cases and furthermore the great majority of IP CTG abnormalities are not due to fetal hypoxia.

This editorial is not the ideal place to expound on the details of the Myth. However, it certainly is the right platform to sound a justifiable warning to 21st century medical practitioners. Such as the potential fallacy of any aspect of science of the day. This applies both to individual as well as "corporate" embracement of new science. In the Myth story one is surprised to find that the Law, which normally and typically moves too slowly in adapting to new science, seemed to accept on board that the majority causation of cerebral palsy is intrapartum hypoxia. The attitude seemed to be "if science so dictates, so it must be!" The same applied to the hotch-potch multiple conclusions on the clinically newly introduced cardio-tocography. The result led to uncountable vitiated Court cases which swept not only the USA but also the UK and all other countries which followed suit.

In the case of cerebral palsy litigation, one must also stress that the adoption of the scientific "facts" had an overwhelming ally - the billion-dollar industry of "birth litigation". While not condemning justifiable legal advice to genuinely medically injured parties, one must also admit that the Myth provided a golden cart for all legal charlatans, ambulance chasers and all who thrive unjustly from the suffering of others to ride on regally into Court. The cerebral palsy -IP CTG saga born in the USA of the 1950's is thought to have contributed to a massive 10% increase in obstetric malpractice lawsuits between 1970 and 1985. Clear evidence exists these obstetric lawsuits themselves contributed to the 1982 -1986 lawsuit spike in USA. No doubt, as often happens, the which USA leads in many things - both good and bad - set the example and many countries followed suit.

Perhaps, in these Covid-19 days, the warning for objective evaluation has an even greater significance. And to objective evaluation one must add, where prudence permits it, the magic and irreplaceable ingredient known as time. Just as it is time which matures the extract of the grape into wine, it is also time which converts medical discovery as part of good medical armamentarium. Neither scientific discovery by itself nor its proclamation as a friend to humanity by interested parties do, by themselves progress the healing of mankind. Rather it is the declaration by the rest of the medical world after sufficient time has elapsed to allow facts to speak for themselves.